

CITIZEN REVIEW OF POLICE CONDUCT TASK FORCE REPORT

Compiled by the Citizen Review Ad Hoc Committee

April 28, 1992


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Santa Clara County

B A R A S S O C I A T I O N

May 5, 1992

Brian C. Walsh, Esq.
SCCBA President
McTernan, Stender & Walsh
101 Park Center Plaza, #1355
San Jose, CA 95113

Dear President Walsh:

I am pleased to forward to you the report of the Citizen Review Ad Hoc Committee for review and action by the Executive Committee and Board of Trustees. Given the nature and content of the process utilized by the Committee and the ultimate work product produced by the Committee, we agreed that the Committee has become a task force and that the report should be denoted a Task Force Report.

The Task Force began its work almost a year ago. It spent considerable energy carefully soliciting and reviewing pertinent information and inviting input from a variety of community and governmental sources so that all points of view on this important and sensitive issue were available to Task Force members.

The recommendation of the Task Force represents a solution to the issue of citizen review which we believe is uniquely tailored to San Jose and Santa Clara County and therefore politically realistic and practically workable. We are hopeful that upon the Board's adoption of this report that community, government and police administration constituencies will openly and fairly evaluate the Task Force recommendation and accompanying materials.

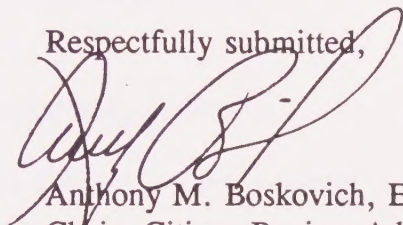
The Task Force members are to be commended for the time spent in sometimes long but constructive debate about the various components of this report. The members actively participated in the drafting of the Task Force Report which reflects the commitment of the Task Force to produce a meaningful recommendation.

The Task Force received invaluable input and assistance from John Crew, an attorney with the ACLU dealing in citizen review and police conduct cases, as well as our Executive Director, Chris Burdick, who attended all the Task Force meetings, provided structure when needed, helped draft and compiled and edited the final Task Force report.

Brian C. Walsh, SCCBA President
May 5, 1992
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The Task Force looks forward to the upcoming and ongoing dialogue on this very important issue.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Anthony M. Boskovich', is written over the typed name.

Anthony M. Boskovich, Esq.
Chair, Citizen Review Ad Hoc Committee

AMB/keb

Enclosure

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SECTION 1

EXECUTIVE SUMMARY

I. TASK FORCE CHARGE AND METHODOLOGY

Subsequent to the Board of Trustees passing a resolution in May 1991 endorsing the principle of citizen review of police misconduct, the Citizen Review Ad Hoc Committee was established to generate a detailed follow-up recommendation. The Committee members represented a range of perspectives: public citizen, local government, police administration, and police officers.

The Committee researched citizen review models in a wide range of jurisdictions and sought input from citizen review professionals, police administration, local government officials, and minority members of the community.

The recommendation represents the consensus of the Committee.

II. BACKGROUND AND SUPPORTING MATERIALS

A. Overview of Citizen Review Models

The majority of large U.S. cities have established civilian oversight of police misconduct complaints. Of the ten U.S. cities larger than San Jose, only three have no civilian review of any kind.

Significant variations exist among citizen review systems ranging from systems which replace police department internal affairs and recommend police discipline to systems which operate concurrently with the police internal affairs and provide advisory findings to systems which only "audit" investigations conducted by police departments.

Only rarely does a civilian review system directly interfere with the chief of police's disciplinary authority.

B. Summary of Input from Police Agencies

Representatives from the City of San Jose Police Department, the City of San Jose City Manager's Office, the Santa Clara County Sheriff's Department, and the Sunnyvale Police Department provided input to the Task Force. That input included an overview of their respective

internal affairs policies and procedures as well as their view of citizen review systems.

The management representatives from all three police departments expressed a desire for more openness in the process but believe current statutory law precludes such openness. Despite the desire for more openness, all representatives believe that the internal affairs process works well and should not be replaced or supplemented with a citizen review board of any kind.

C. Summary of Input from Public Groups and Individuals

The Task Force invited and heard from representatives of each of the following groups: Asian community; Vietnamese community; Hispanic community; Public Interest Law Firm of the Santa Clara County Bar Association Law Foundation; and the Santa Clara County Human Relations Commission.

The minority communities report a distrust for the established internal affairs process and agreed that more openness and trust was necessary. The existence of a citizen review board alone will not immediately solve the problem but a citizen review board that establishes a proven track record over a period of time will serve to increase trust between the community and the police departments.

The Santa Clara County Human Relations Commission has developed a relationship with the County Sheriff's Department to help prevent police misconduct but the Commission itself conducts no citizen review of complaints.

III. TASK FORCE RECOMMENDATION

The form of citizen input for review of police conduct in the City of San Jose and the County of Santa Clara should be an independent citizen review and advisory board that parallels the police department's internal affairs system. The Board would independently investigate complaints and make advisory findings. It would also hold hearings and make advisory recommendations on police policies, procedures, and practices. The Board would not replace internal affairs nor usurp the Chief's or Sheriff's disciplinary authority.

IV. NEED FOR CITIZEN REVIEW

Creating a civilian review mechanism introduces a system of independent "checks and balances" into local policing. Police officials need not feel threatened by a civilian review system since it can serve important functions for the police department such as promoting better public understanding of

police policy and practices. Introducing independent review does not necessarily imply that there are widespread abuses of power. Citizen review is about "good government" not "bad cops."

Citizen review has been successful in most cities because it represents a significant benefit to and generally positive impact on police-only internal affairs that leave police to "police" themselves. These benefits are apparent in the following ways: (1) reduces secrecy and promotes more openness so that citizens know that their complaint was in fact taken seriously and reviewed; (2) eliminates public skepticism simply by being an entity apart from the police; (3) serves a community relations function by promoting greater confidence and trust in police by demonstrating that allegations of wrongdoing are fairly and thoroughly investigated and by providing a mechanism for citizen input on police policies and practices; (4) provides a hearing in which a complainant is a participant and personally observes the process, leaving the complainant more satisfied than with a closed internal affairs process; (5) promotes more regular and detailed statistical analysis of complaints which can assist proactive police administrators and public officials in timely identifying and addressing problems; and (6) reduces bureaucratic and procedural barriers to filing a complaint which may reduce a citizen's intimidation in making a complaint.

V. OVERVIEW OF CITIZEN REVIEW AND ADVISORY BOARD

A. Composition

The Board should be comprised of citizens reflecting the ethnic diversity of the City of San Jose and Santa Clara County. If a Board member is seated who has a law enforcement background, that member should not be a current employee of the subject department.

B. Powers and Responsibilities

The Citizen Review and Advisory Board should have investigatory power independent of the police department; the power to conduct public hearings; the power to compel police department personnel, including officers, to submit to interviews and to testify; and the power to render advisory findings and recommendations directly to the Chief of Police and other appropriate public officials and/or bodies.

The Board should also have the power to conduct public hearings on police policies and practices and render advisory recommendations thereon.

C. Adjudication Authority

The findings of the Citizen Review and Advisory Board should be

advisory in nature and should be public.

Hearings should be open to the public absent extraordinary circumstances.

The standard of proof should be a "preponderance of the evidence."

D. Subpoena Power

The Board should have the power of subpoena to compel all parties and witnesses to attend and testify at a public hearing.

E. Police Cooperation with Board

All police personnel, as a condition of employment, should be required to cooperate with and testify before the Citizen Review and Advisory Board.

An officer should be compelled to testify unless a criminal investigation, proceeding or case is threatened, commenced or pending. The Citizen Review and Advisory Board under those circumstances should suspend its investigation until the criminal matter is fully and finally adjudicated or dismissed.

The Board should not have access to either the police officer's personnel file or documents. In addition, writings and documents generated as a result of an internal affairs investigation should remain confidential.

VI. HANDLING CITIZEN COMPLAINTS

A. Filing a Complaint

Any individual alleging to be a victim of police misconduct as well as any civilian, another officer employed by the subject police department, a Board member or staff member of the Citizen Review and Advisory Board, or a member of the police department administration should have standing to file a complaint.

Complaints should be filed in a combination of public and police locations and copies of all complaints regardless of where received should be filed with the Board.

B. Screening Complaints

The Board should have authority to screen out complaints, set policies

and procedures for screening and for recommending complaints for informal mediation.

C. Investigation

Investigations should be conducted by civilian investigators employed by the Citizen Review and Advisory Board.

D. Potential Criminal Prosecution

When a complaint is filed with the Citizen Review and Advisory Board as well possible criminal charges against the officer, the Board should suspend its proceedings until the criminal investigation is concluded and the matter finally and fully adjudicated.

E. Informal Resolution/Mediation

A non-adversarial, voluntary, informal resolution process should be established for complaints of a minor nature.

VII. PETITION FOR REHEARING

A procedure for either party to the complaint to request a rehearing within a reasonable time after the Board renders its findings should be implemented.

SECTION 2

TASK FORCE CHARGE AND METHODOLOGY

In May of 1991, the Trustees of the Santa Clara County Bar Association passed a resolution recommending in principle to the City of San Jose and County of Santa Clara the implementation of a citizen review mechanism of police conduct. The issue is clearly controversial. As a result, the President of the SCCBA appointed this Committee to study the issue of citizen review boards and to make a follow-up recommendation to the Board of Trustees. It was readily apparent that many perspectives exist relative to this issue, each perspective being distinct and strongly held. To ensure that each major viewpoint was represented, the Committee was comprised of members representing perspectives of the public, local government, police administration, and police officers. Although each member was encouraged to express their opinion, each member was also asked to set aside any pre-determined agenda and to commit to openly reviewing and discussing the need, if any, of citizen review.

The Committee decided that it should first investigate need, use, and effectiveness of citizen review boards and police commissions in other jurisdictions from the perspective of the public, government officials, and police officers. The Committee reviewed citizen review models from other jurisdictions and received testimony from representatives of police agencies, municipalities, citizen review professionals, and members of public groups and individuals. In addition, the Committee obtained and reviewed the research materials attached to this Report as the Appendix.

This Task Force recommendation represents the consensus of the members of the Committee as follows.

Anthony M. Boskovich, Chair
Craig M. Brown***
John M. Crew
William R. Danser**
Minh Q. Dovan
Thomas J. Ferrito
William Holley

Stuart Kirchick
Michael A. Kresser
James S. Neil
William Priest, Jr.**
Deborah A. Ryan*
Patrick E. Tondreau
David W. Washington
Christine A. Burdick, Executive Director

- * This member, given her local government employment, participated in discussions but did not vote on any of the recommendations.
- ** These members did not participate in any of the discussions which produced this report.
- *** This member submitted a resignation on April 3, 1992.

SECTION 3

BACKGROUND AND SUPPORTING MATERIALS

3.1 Overview of Citizen Review Models

Of the 50 largest U.S. cities, 32 now have some form of civilian oversight of police misconduct complaints. Seventeen of these systems have been created in the last six years -- 12 in the last four years. Of the ten cities larger than San Jose, only Los Angeles, Philadelphia, and San Antonio do not have some form of civilian review. California civilian review systems include Richmond, Berkeley, UC Berkeley, Oakland, San Francisco, Rio Vista, Fresno, Long Beach, San Diego City, and San Diego County.

Not all civilian oversight systems are "civilian review boards." In fact, a great deal of variety exists among the various systems as to the specific powers, roles and structures. However, most fit within one of the following three general models for civilian oversight.¹

- [1] Civilian Auditing Committees: These bodies do not independently investigate citizen complaints. They typically only review investigations conducted internally by the police. They usually rely on written investigative reports prepared by police investigators and do not have direct access to complainants, witnesses, and officers. Portland, Oregon's Internal Investigations Auditing Committee and San Diego City's Citizen Review Board are examples of this model.
- [2] Civilian-Staffed Investigative Agencies: These systems use trained staffs of civilian investigators to independently investigate and make findings on complaints. While there are often some procedural distinctions, the civilian investigators interview complainants, witnesses and officers, and gather and review evidence and prepare reports as part of a process that is similar to a police internal affairs system. The key distinction is that this function is performed by civilians rather than police officers. San Francisco's Office of Citizen Complaints and Chicago's Office of Professional Standards are examples of this model.
- [3] Civilian Review Boards: These systems are comprised of appointed

¹ *These three models were grouped by the Task Force; various other descriptions of citizen review models are used. For examples of other descriptions refer to Exhibit 1. In addition, a comprehensive survey of the 50 largest cities and their systems of civilian review conducted by University of Nebraska is attached as Exhibit 2.*

panel members who either collectively or as sub-groups hold quasi-judicial hearings into misconduct allegations. While they usually have some staff to conduct initial investigations (typically much smaller than the agencies' staffs in #2 above), the primary fact-finding tool is the board hearing. These boards also hold hearings and make recommendations on policy matters. San Diego County Citizen Law Enforcement Review Board, Long Beach Citizens' Police Complaints Commission and the Berkeley Police Review Commission are examples of this model.

Within these three models are a number of specific differences. Some civilian review systems are placed structurally under a city manager or city council. Others are made part of the same police department structure they are charged with reviewing. Some investigate all complaints while others review only certain categories of complaints (e.g., unnecessary force, racial slurs). Some have original jurisdiction over complaints -- they "replace" police internal affairs. Others exist on a "parallel track" with police internal affairs with both entities sometimes investigating a case simultaneously.

Some civilian review systems prohibit staff or members from being a current member of the police department. Others ban anyone who has ever been a member of that department. Some review boards have its members appointed by city council districts. Others are appointed by a combination of public officials such as the mayor, city council, city manager, police chief, and others. No existing citizen review board of any type has members who are elected.

Some have legally mandated access to all police records and officers. Others review only those materials the police department voluntarily makes available. Some hold public hearings. Others convene only closed hearings.

Only in very rare instances does a civilian review system directly interfere with the police chief's disciplinary authority. In some systems, the chief is completely free to ignore or "veto" the disciplinary recommendations of the review body. In others, if the department and civilian review system disagree about a particular case, a third party, such as the city manager or city council, can use the civilian system's recommendations to make specific inquiries of the chief of police about the case. In San Francisco, if the department disagrees with the civilian agency's recommendations, the director of the agency can schedule a hearing before the Civilian Police Commission, which supervises both entities, to resolve the dispute.

3.2 Summary of Input from Police Agencies

The Committee heard from representatives of the City of San Jose Police Department and City Manager's Office; the Sunnyvale Police Department; and the Santa Clara County Sheriff's Department. Each department was represented by internal affairs investigators and management. The San Jose Police Department was represented by

Lieutenant Delgado and two internal affairs investigators; the City Manager's Office was represented by Deputy City Manager Nabar Martinez. Representing the Sunnyvale Police Department was Chief of Police Jess Barba. The Santa Clara County Sheriff's Department was represented by Sheriff Charles Gillingham, two internal affairs investigators and the Department's two assistant sheriffs.

Each department described in some detail the procedures for processing a citizen complaint of police misconduct. The procedures for all three departments were conceptually similar in that the department, through its designated internal affairs officers, takes the complaint, investigates the complaint and makes findings which go through the command structure up to the Chief or Sheriff. Discipline is determined and implemented through the command structure.

The Sunnyvale Police Department does allow anyone in the police department or any city employee to receive a complaint and take it to internal affairs. Also, the complainant is advised in writing that once a finding is made, the complainant can request a meeting with the Chief of Police or City Manager.

Pursuant to current statutory law, the internal affairs investigations are confidential. The findings and discipline are not provided to the complainant. The complainant is told only whether the allegations of misconduct are sustained or not sustained. However, in Sunnyvale, the Chief of Police reviews the findings with the City Manager before the findings are sent to the complainant.

The City of San Jose implemented a procedure in February 1991 which allows citizens to complain to the City Manager's Office about the police department's internal affairs process and to ask the City Manager through the Deputy City Manager to review a completed internal affairs investigation. The Deputy City Manager will not investigate a citizen complaint but may explain the internal affairs process and assist the citizen in filing the complaint should the citizen be hesitant about dealing with internal affairs.

Overall, the management representatives from all three police departments expressed a desire for more openness in the process, suggesting that more openness might create more public confidence in the internal affairs process. However, each department believes that current law precludes more openness. Notwithstanding a stated desire for more openness, all three departments believe the internal affairs process works well and should not be replaced or supplemented with a citizen review board.

Attached as Exhibits 3, 4, and 5 are copies of the written internal affairs procedures for the San Jose Police Department, Santa Clara County Sheriff's Department and the Sunnyvale Police Department, respectively.

3.3 Summary of Input from Public Groups and Individuals

The Committee invited representatives from the minority communities in the county,

including Asians, Vietnamese, Hispanics, and African-Americans, to speak to the Committee. Donna Yamashiro from the Asian Law Alliance provided a perspective from the Asian community. Minh Dovan provided input from the Vietnamese perspective. Representing the Confederacion de la Raza was Henry Dominguez.

In addition, the Committee heard from the Santa Clara County Bar Association Law Foundation Public Interest Law Firm represented by Amanda Wilson. Providing input from Santa Clara County Human Relations Commission was James McEntee.

The minority groups agreed that the minority communities do not trust the internal affairs division of the police departments. The process is closed and generally inhospitable to minority complainants. As examples, it was noted that the internal affairs divisions do not have staff who speak any of the Asian languages. Minh Dovan noted that the San Jose Police Department liaison to the Vietnamese community is Hispanic. The police departments are generally viewed as frustrating rather than assisting complainants' efforts.

The Confederacion de la Raza believes there is a significant mistrust of the police by the Hispanic community. That distrust makes it impossible for a closed internal affairs division to be trusted and viewed as credible. More openness is a start. The Confederacion believes that citizen review of police conduct would be a good start but to be credible the citizen review board would have to gain the community's trust and confidence through a positive track record over time not just merely by the fact that it exists.

Jim McEntee, from the County Human Relations Commission, reported that over the years they have developed a working relationship with the Sheriff's Office to help prevent police misconduct. The Commission has a very informal process of reviewing police misconduct complaints if a citizen happens to contact the Commission. The Commission does not act as a formal citizen review process. McEntee agreed that less secrecy would help with the public's perception of the effectiveness of internal affairs investigations.

The Committee also received letters from several individuals and groups supporting the idea of civilian oversight. Those letters are attached as Exhibit 6.

All the groups and individuals represented agreed that more openness was necessary in any process of reviewing and investigating complaints of police misconduct.

3.4 Summary of Input from Citizen Review Professionals

The Committee heard from Robert Bailey, Police Review Commission Officer with the Berkeley Police Review Commission, and Barbara Attard, Senior Investigator with the San Francisco Office of Citizen Complaints. The Committee received written materials from Donald Casimere with the Richmond Police Commission and President of the Board of Directors of the International Association for Civilian

Oversight of Law Enforcement. Mr. Casimere's letter and attachments are attached to this Report as Exhibit 7. Notably, Mr. Casimere informed the Committee that the "collective experience of the members of our association has proven that civilian review has definitely had a positive impact on police services and police community relations."

Robert Bailey and Barbara Attard reviewed the complaint, investigative and decision making procedures for their respective police commissions in Berkeley and San Francisco. Both Commissions have paid staff and paid investigators. Both noted and stressed that the investigators are trained professionals, most of whom have prior investigative experience.

In 1982, San Francisco established the Office of Citizen Complaints which replaced the police department's internal affairs as the investigative body for citizen complaints of police misconduct. The Office of Citizen Complaints investigates, conducts closed investigative hearings and makes findings of fact. Police officers are required to cooperate with the Office of Citizen Complaints and to answer questions. In addition to making findings of fact, the Office of Citizen Complaints makes policy recommendations to the police department. Complaints which are sustained by the Office of Citizen Complaints are prosecuted by a staff attorney from the Office of Citizen Complaints before either the Police Chief or Police Commission. If the Chief of Police disagrees with findings of fact made by the Office of Citizen Complaints, the issue is brought before the Police Commission for a determination of whether the case will go forward. The San Francisco Police Commission oversees both the Office of Citizen Complaints and the San Francisco Police Department. Attached as Exhibit 8 is a more detailed description of the Office of Citizen Complaints.

The Berkeley Police Review Commission, by contrast, did not replace internal affairs. It was established in 1971 by citizen initiative as a parallel track to the internal affairs process. It has the power to investigate and make findings but does not make disciplinary recommendations. The Commission's findings are forwarded to the City Manager. The Commission refers all complaints to internal affairs but internal affairs is not required to refer citizen complaints it receives to the Commission. Commission hearings are public. Like the San Francisco Commission, the Berkeley Commission can and does make policy recommendations to the police department. Attached as Exhibit 9 is a detailed description of the Berkeley Police Review Commission and procedures.

Both professionals agreed that citizen review plays a positive role in the community and can positively impact police procedures and practices. Both noted that the existence of citizen review boards provides citizens with a viable option for resolving complaints.

SECTION 4

TASK FORCE RECOMMENDATION

The Task Force recommends that the form of citizen input for review of police conduct in the City of San Jose and the County of Santa Clara be an independent citizen review and advisory board that parallels the police departments' internal affairs system.

This model, used throughout California in jurisdictions such as San Diego County and Berkeley, does not replace or usurp the police departments' internal affairs investigation or the police chief's or sheriff's responsibility for discipline. The present confidentiality of internal affairs investigations is not interfered with nor made public.

This model emphasizes a parallel investigatory and review board comprised of citizens who would independently investigate police misconduct allegations and make advisory findings about the police conduct as well as policy and procedural recommendations. A citizen review and advisory board model strikes the most realistic balance among the sometimes conflicting needs of effective discipline, questions of confidentiality, police officer rights and the need for citizen input and review.²

The Task Force recognizes that this proposal will have a fiscal impact. The extent of that fiscal impact is difficult to project at this juncture; therefore, the Task Force makes no recommendation as to funding.

² *This recommendation is similar to the City of Minneapolis Civilian Review Committee Recommendation. The complete text of that report is included in the Appendix as Exhibit 10.*

SECTION 5

NEED FOR CITIZEN REVIEW

On the most basic level, creating a civilian review mechanism introduces a system of independent "checks and balances" into local policing. Some police officials feel threatened by the proliferation of civilian review systems. However, introducing independent review over the exercise of government powers does not necessarily imply that there are widespread abuses of these powers. Instead, the need for civilian review stems from the core democratic principle that institutions which wield great power and spend significant taxpayer resources should be subject to some review by outside bodies.

Thus, civilian review is as much about "good government" as it is "bad cops." And, like other government systems of "checks and balances," civilian review is not a magic wand that solves all police-related issues. The success of civilian review is not measured by the absence of controversy about police issues or by the elimination of all claims of abuse and brutality. Instead, civilian review has been successful in most cities because it represents a significant benefit to and generally positive impact on police-only internal affairs that leave the police to "police" themselves. These benefits are most apparent in the following areas:

SECRECY: Most civilian review systems operate with a greater degree of openness than police internal affairs systems. Most police systems will inform the complainant of the findings (sustained, unfounded, exonerated, etc.) on his or her allegations but will not provide any information explaining why the conclusion was reached or reviewing what evidence and witnesses were considered. The investigative report is treated as a confidential document. Complainants are, in effect, told "trust us" by police internal affairs systems and nothing more.³

Since the vast majority of complaints against police officers in both police and civilian review systems are not sustained, it is particularly important that complainants, officers and members of the public be shown -- through an open hearing or through access to an investigative report -- how thoroughly the case was investigated and why the evidence supported the particular finding. Findings that are left wholly unexplained are much more likely to be viewed as arbitrary. Confidentiality practices make it difficult for the complainant to assist the investigation by pointing out

³ *This secrecy stems in part from Penal Code §832.7 which some maintain mandates confidentiality. However, some argue that case law supports the position that §832.7 is not an impediment to greater openness in police complaint systems. The model of civilian oversight proposed in this Report is not an agency subject to the provisions of Penal Code §832.7.*

evidence or witnesses that may have been missed. Secrecy breeds suspicion and undercuts the effectiveness and reliability of the investigations.

PUBLIC SKEPTICISM: Even though a police department is committed to thoroughly investigating allegations of police misconduct, some public skepticism will always exist about whether the police can fairly "police" themselves. This skepticism may be particularly acute in poor and minority communities and is nearly always present in those who feel they have been victimized by serious acts of police abuse. If someone believes excessive force was used by a police officer and is also falsely charged with criminally assaulting the officer, he or she is likely to feel uncomfortable about going back to the same police department to file a complaint. An independent civilian review system housed in a location physically separate from the police department and staffed by non-police personnel is much more likely to gain the confidence of that complainant.

This natural skepticism keeps a large number of people with legitimate allegations from filing complaints. One internal affairs officer told the Committee that he estimated that only about 5% of the people who feel they have valid complaints actually file them with internal affairs. Police officials can do little about abusive officers unless members of the public feel comfortable coming forward to use the processes set up to look into complaints. Civilian review can reduce this skepticism and lead to a greater use of these systems. One police officer told the Committee that the number of complaints would double if a citizen review board were established. Even if that is the case, those additional complaints should serve to help that police department correct situations that may otherwise continue. In addition, with greater access to information about complaints and incidents, a civilian review system can better serve a risk management function by identifying possible problem officers, tactics or policies before they generate litigation.

COMMUNITY RELATIONS: A well-designed civilian review system also serves a community relations function. Police are highly dependent on public trust and confidence in pursuing crime. An independent and open civilian review system can help build that trust by demonstrating that allegations of wrongdoing -- even by police officers -- will be fairly and thoroughly investigated.

More importantly, civilian review systems can institutionalize the practice of taking into account community perspectives not only in investigations of incidents but on policy issues as well. First, specifically integrating a policy evaluation role into the system recognizes the reality that complaints are often not the "fault" of the officer. They are sometimes caused more by out-of-date or problematic policies or training. Civilian review systems that are not part of a police administration may be able to spot and consider the policy issues revealed during complaint investigations better than the police administration who may be too close to the issue.

Second, providing an ongoing forum for discussing police policies can lead to greater public understanding about the necessity for certain procedures and tactics and can provide constructive community input on priorities and police strategies in their neighborhoods. This is a natural extension of the nationwide trend towards community-oriented policing -- police working in partnership with neighborhoods to combat problems. Civilian review also can enhance the valuable perspectives of minorities, women, and gays and lesbians who may not be proportionately represented within a police agency -- particularly at the policy setting levels in the upper ranks.

HEARINGS: Most civilian review systems include a hearing component as part of the complaint-solving process. No internal affairs process includes hearings that involve both the complainant and the officer. Because so many police abuse complaints involve no independent witnesses, a hearing where both accounts can be probed and credibility can be judged is crucial to any thorough attempt at solving a particular allegation.

Even if the evidence does not point to a particular conclusion at the end of the hearing, the hearing itself has an enormous positive impact on public confidence in the complaint system and, by extension, in the department. Providing even an informal "day in court" where both parties provide their version of events sends the clear message to both the complainants and the officers that complaints are taken seriously. Complainants can participate fully in a hearing, unlike an internal affairs investigation, and can personally observe how their allegations are considered. When an officer is found to have behaved appropriately, a complainant is much more likely to be satisfied if he or she perceives that the complaint is reviewed thoroughly in a hearing.

STATISTICAL ANALYSIS: Civilian systems are also more likely to regularly publish detailed statistical reports that analyze a variety of trends in the complaint and discipline systems. Reports breaking down complaints by allegations, results, location, time of day, police assignment, type of activity involved, length of service of the officer, and race of complainant are not unusual in civilian systems. These detailed reports can, in turn, assist proactive police administrators and public officials in timely identifying and addressing problems.

PROCEDURAL BARRIERS: Civilian review systems can reduce the bureaucratic and procedural barriers to filing a complaint that sometimes exist in internal affairs systems. For example, civilian review systems sometimes: (1) distribute easy-to-use complaint forms in several languages; (2) distribute flyers clearly describing and diagramming the complaint process; (3) have multi-lingual staff; (4) accept complaints by phone or allow community agencies to assist complainants in filling out forms; (5) accept complaints from non-witnesses or participants (no formal "standing" requirement); and (6) physically respond to complainants who may be in custody or otherwise unable to go to the complaints office.

For additional information on the need for civilian oversight of police conduct, see two ACLU reports attached as Exhibits 11 and 12. See also a description of the International Association for Civilian Oversight of Law Enforcement at Exhibit 13. Finally, see the California Judiciary Subcommittee on Peace Officer Conduct at Exhibit 14.

SECTION 6

OVERVIEW OF CITIZEN REVIEW AND ADVISORY BOARD

6.1 Composition

The Task Force makes no specific recommendation concerning the composition of the Citizens Review and Advisory Board except that the Board should be comprised of citizens who reflect the ethnic diversity of the City of San Jose and County of Santa Clara. If the appointing authority wishes to consider an appointment for which law enforcement experience is a qualification, the Committee recommends that no one currently a member of the San Jose Police or County Sheriff's Department hold that appointment. Representatives of the police department will already participate in a representative and advisory capacity and as witnesses. Having current members of the department on the Board would create a conflict of interest as well as diminish the community's respect for the independence of the Board.

6.2 Powers and Responsibilities

The Citizen Review and Advisory Board should have the power to conduct investigations independent of the police department. It should also have the power to hold public hearings, to compel police department personnel, including officers, to submit to interviews and to testify at Citizen Review and Advisory Board hearings, and to render findings and make recommendations directly to the Chief of Police and other appropriate public officials and/or bodies.

The overall jurisdiction of the Citizen Review and Advisory Board should include not only investigatory power over all allegations of misconduct by police department personnel but also authority to make recommendations regarding department policies, practices and procedures. The Board should disclose and make public its reports and findings.

These recommendations are based on the premise that citizen input must be not only public, but must have the power of independent investigation to establish credibility within the community. Further, it is critical that the Board be able to make policy and procedure recommendations rather than mere findings related to a specific incident. This broader policy jurisdiction will aid in preventing further allegations of misconduct, will enhance the credibility of the Board, and serve an important public relations function for the police department. It is equally important for police discipline that the role of internal affairs not be usurped and that the responsibility for police discipline remain within the command structure of the department.

6.3 Adjudication Authority

While the jurisdiction of the Citizen Review and Advisory Board includes reviewing all allegations of misconduct by department personnel as well as issuing recommendations dealing with department policies, procedures and practices, the findings and recommendations of the Citizen Review and Advisory Board would be only advisory in nature. With the police chief, sheriff, and other appropriate public officials and/or bodies all receiving notice of these advisory findings and with the findings themselves being public, meaningful public input and influence and a "check and balance" over disciplinary issues and police department policies, practices and procedures will be established.

The standard of proof should be a "preponderance of the evidence." When the Citizen Review and Advisory Board determines a case is ready for adjudication, an evidentiary hearing can be called by the Board and/or either party in the case. This hearing should be open to the public absent extraordinary circumstances.

6.4 Subpoena Power

The power of subpoena to compel all parties and witnesses to attend and testify at a public hearing should be a main component of the Citizen Review and Advisory Board. Without it, the Board will be without the underpinnings necessary to establish credibility and have meaningful input.

6.5 Police Cooperation with Board

All police personnel, as a condition of employment, should be required to cooperate with and testify before the Citizen Review and Advisory Board.

However, if a criminal investigation, proceeding or case is threatened, commenced or pending, the Citizen Review and Advisory Board should suspend its investigation until the criminal matter is fully and finally adjudicated or dismissed.

If police personnel exercises his or her Fifth Amendment right not to testify and a criminal investigation or case is not threatened or pending, that officer would be required to testify as a condition of employment and that testimony would remain public.⁴

⁴ *The issue of the police officer exercising his or her Fifth Amendment right was vigorously debated among Committee members. This position reflects a majority vote of the Committee. For a brief overview of the arguments on both sides of this issue refer to the Appendix at Exhibit 15.*

In addition, a police officer's personnel file should not be disclosed to the Citizen Review and Advisory Board or any of its staff or agents. The Board also should not be entitled to any documents or writings generated as a result of an internal affairs investigation.

6.6 Reports of Findings/Notification to Parties

The Citizen Review and Advisory Board should, within a reasonable time of the hearing on the complaint, make written findings. The Board should immediately mail to each party to the complaint a copy of the findings along with a notice of the right to petition for rehearing.

SECTION 7

HANDLING CITIZEN COMPLAINTS

7.1 Filing a Complaint

The Committee recommends that any individual should have standing to file a complaint so long as that individual claims to be the victim of police misconduct; other individuals permitted to file a complaint should include any civilian, another officer employed by the subject police department, a Board member or staff member of the Citizen Review and Advisory Board, or a member of the police administration. Complaints should be physically received in a combination of public and police locations, by personnel employed at that location. All complaints should be submitted to the Citizen Review and Advisory Board for processing.

Copies of all complaints filed with the Citizen Review and Advisory Board should be forwarded to internal affairs. Likewise, copies of all complaints reviewed by internal affairs should be forwarded to the Citizen Review and Advisory Board.

7.2 Screening Complaints

The Citizen Review and Advisory Board should have the authority to screen out complaints before investigation or final findings are made so long as the file is maintained and includes all information submitted and evidence gathered and written documentation outlining the basis for closing the case. The Citizen Review and Advisory Board should have ultimate responsibility for setting the policies and the criteria for screening complaints as well as for policies and procedures to route complaints for informal mediation. The Board should have authority to delegate such screening duties to the Board's management and/or staff.

7.3 Investigation

Investigations should be conducted by civilian investigators of the Citizen Review and Advisory Board. "Civilian investigator" refers to an individual who is not presently nor ever has been a sworn officer of the subject police department.

7.4 Potential Criminal Prosecution

In anticipation of cases where there is both a complaint with the Citizen Review and

Advisory Board and possible charges against the officer, the Board should suspend its proceedings pending the criminal investigation. Once the criminal case is closed, the Board should then proceed with its investigation. See §6.5 supra.

7.5 Informal Resolution/Mediation

A non-adversarial, voluntary, informal resolution process should be established for complaints of a minor nature. The Committee is not aware of any police internal affairs system that has an informal resolution process. A number of civilian review systems, particularly in Canada, are now including this component.

Some complaints arise from simple misunderstandings or minor acts of rudeness or discourtesy. No one should have an interest in resolving these sorts of issues with an overly formal and time-consuming complaint investigation or hearing. The officer may be quite willing to apologize or sit down with a "complainant" and explain things from his or her perspective. A "complainant" is probably more interested in being treated with respect by the officer and having his or her concerns acknowledged than in having the officer disciplined. Unless there is a pattern of similar conduct by the officer, neither the police department nor the Civilian Review and Advisory Board should have any independent interest in a formal investigation of these kinds of complaints.

This informal resolution process could range from sitting down with a mediator to a private meeting to a written apology. It should be completely voluntary on the part of both the officer and the complainant. The Citizen Review and Advisory Board should have the right to "veto" any proposed informal resolution if it feels the agreement was coerced or if it feels the officer has exhibited a pattern of similar conduct.

An informal resolution component as part of the Citizen Review and Advisory Board acknowledges a reality police internal affairs processes often ignore: police officers are human -- they have bad days; they make mistakes. Not every "mistake" should automatically trigger a formal complaint and investigation.

SECTION 8

DISCIPLINE OF POLICE OFFICERS: AUTHORITY

The Committee recognizes that the authority of the Chief of Police and his or her command staff are paramount to maintaining discipline, good order and morale among the members of the department. Therefore, the Committee recommends that the Citizen Review and Advisory Board have advisory authority only, i.e. the authority to make policy recommendations and to make factual findings with or without recommendations. Such findings and recommendations should not be binding on the Chief or Sheriff.

SECTION 9

PETITION FOR REHEARING

Any party to the complaint should have the right to petition in writing for rehearing within a reasonable time after the mailing of the written findings to the parties. A rehearing should be granted only under the following circumstances: (a) if the petition establishes by supporting affidavit that there is newly discovered evidence which is material and helpful to the party seeking the rehearing, which could not have been with reasonable diligence discovered and produced at the hearing; or (b) the petition establishes the existence of substantial procedural error at the hearing, which likely affected the findings.

Upon receipt of a petition for rehearing, the Board should make a decision to grant or deny it within a reasonable period of time. When a rehearing is granted, that rehearing should be held as expeditiously as possible.

APPENDIX

APPENDIX

- EXHIBIT 1:** Forms of Civilian Oversight
- EXHIBIT 2:** Civilian Review of the Police: A National Survey of the 50 Largest Cities, 1991
- EXHIBIT 3:** San Jose Police Department -- Internal Affairs Overview
- EXHIBIT 4:** Santa Clara County Sheriff's Department -- Internal Affairs Overview
- EXHIBIT 5:** Sunnyvale Police Department -- Internal Affairs Overview
- EXHIBIT 6:** Letters from Individuals and Groups
- Ted Q. Nguyn
 - Asian Law Alliance
 - Santa Clara Valley ACLU
 - An Viet Foundation
- EXHIBIT 7:** Donald Casimere Letter and Attachments
- EXHIBIT 8:** San Francisco Office of Citizen Complaints
- EXHIBIT 9:** Berkeley Police Review Commission Procedures
- EXHIBIT 10:** A Model for Citizen Review of Police Conduct in Minneapolis
- EXHIBIT 11:** NYCLU -- Police Abuse: The Need for Civilian Investigation and Oversight
- EXHIBIT 12:** On the Line: Police Brutality and its Remedies

EXHIBIT 13: International Association for Civilian Oversight of Law Enforcement

EXHIBIT 14: Judiciary Subcommittee on Peace Officer Conduct

EXHIBIT 15: Position Overviews re Exercise of Fifth Amendment Right by Police Officers

EXHIBIT 1

FORMS OF CIVILIAN OVERSIGHT

Internal Review	Auditing Internal Review	Monitor Internal Review	Appeal Internal Review	Civilian Inclusion	External Review A	External Review B
Police, accept, resolve, investigate, adjudicate, decide discipline.	Same as internal review except citizens review thoroughness & fairness.	Same as internal review except citizens review the complaints and comment on police chief's intended disciplinary decision.	Citizen appeals police decision to citizen review agency.	Citizens employed by police to accept, investigate & recommend discipline.	Citizen Commission / Board accepts, resolves, investigates, adjudicates, recommends discipline.	Legislative / Administrative office accepts, resolves, investigates, adjudicates, recommends discipline.
1987 PERF survey of 101 police departments 80% had special internal review unit	Portland, OR's Police Internal Investigations Auditing Committee San Diego, CA's Citizen Review Board	Hartford, CT's Investigative Review Board	Toledo, OH's Police Review Board Toronto, Ontario, Public Complaints Commissioner	Chicago, IL's Office of Professional Standards	Cleveland, OH's Police Review Board San Diego County, CA's Citizens Law Enforcement Review Board New York, NY's Civilian Complaint Review Board	Flint, MI's Ombudsman Cincinnati, OH's Office of Municipal Investigations San Francisco, CA's Office of Citizen Complaints

EXHIBIT 2

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CIVILIAN REVIEW OF THE POLICE:
A NATIONAL SURVEY OF THE 50 LARGEST CITIES, 1991

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April 1991

Price: \$3.00

Research for this report was funded in part by the University
Committee on Research of the University of Nebraska at Omaha.

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Civilian Review: The New National Consensus

Procedures for civilian review of citizen complaints about police misconduct exist in 60% of the big cities in the United States. A national survey found civilian review procedures in 30 of the 50 largest cities.

Civilian review procedures have spread rapidly in recent years. Ten have been established since 1988. Fifteen, or half of the current total, have been established since 1986. Three new procedures began operations in 1991 (Long Beach, Toledo, Minneapolis).

The spread of civilian review represents a new national consensus on civilian review as an appropriate method of handling citizen complaints about police misconduct. This consensus reflects the judgment of elected officials --mayors and city council members-- in over half of the big cities.

Classification of Civilian Review Procedures

Civilian review is defined as a procedure in which complaints about police misconduct are reviewed at some point by persons who are not sworn police officers.³

Existing civilian review procedures vary greatly. No two systems are exactly alike. The national survey classifies procedures according to:

- (1) who does the initial investigation of a citizen complaint; and,
- (2) who reviews the investigative report and makes a recommendation for action.

³ A non-systematic collection of material on civilian review boards is found in International Association of Civilian Oversight of Law Enforcement (IACOLE), Compendium of International Civilian Oversight Agencies (Evanston, IL: IACOLE, 1989).

The three types of civilian review agencies are:⁴

Class I: (a) Initial investigation and fact-finding by non-sworn personnel; (b) Review of investigative report and recommendation for action by non-sworn person or board consisting of a majority of non-sworn persons.

Class II. (a) Initial investigation and fact-finding by sworn police officers; (b) Review of investigative report and recommendation for action by a nonsworn person or board which consists of a majority of non-sworn persons.

Class III. (a) Initial investigation and fact-finding by sworn officers; (b) review of investigative report and recommendation for action by sworn officers; (c) opportunity for the citizen who is dissatisfied with the final disposition of the complaint to appeal to a board which includes nonsworn persons.

Comment. The survey rejects the commonly used distinction between "internal" and "external" review procedures. Some of the existing procedures (i.e., Chicago, Detroit) are "internal" in the sense that the staff are employees of the police department or police commission.. Because the staff members are not sworn officers, however, these procedures provide an independent review of complaints. By contrast, the Kansas City Office of Civilian Complaints is "external" to the police department, with a civilian director, but complaints are investigated by sworn officers. Although nominally "external," it does not have involvement of non-sworn personnel at the critical fact-finding stage.

Distribution of Existing Civilian Review Procedures

Twelve of the 30 civilian review procedures, or 40%, are Class I systems. Fourteen, or 46.6%, are Class II systems. Four, or 13.3%, are class III systems.

There is no pattern to the geographic distribution of civilian review procedures. There is no pattern to the distribution of civilian review procedures based on the racial composition of the city. Procedures exist in cities with a high percentage of racial minorities (Detroit, Atlanta, Washington, DC) and in cities with

⁴ A similar classification, using different terminology, was created by Wayne Kerstetter, "Who Disciplines the Police? Who Should?," in William A. Geller, ed., Police Leadership in America: Crisis and Opportunity (New York: Praeger, 1985), pp. 149-182. Kerstetter's "Civilian Review" is the same as Class I in this report; his "Civilian Input" similar to Class II here; "Civilian Monitor" similar to Class III here.

relatively small racial minority populations (Indianapolis, Minneapolis).

Enabling Authority

Most (23 out of 30) of the existing civilian review procedures have been established by local ordinance. Three were created by state statute and four by executive order.

Creation of civilian review procedure by ordinance represents a significant change from the 1960s when the two most important civilian review procedures were established by executive order. In both New York City and Philadelphia liberal mayors created civilian review procedures when their respective city councils refused to act. The civilian-dominated Civilian Complaint Review Board in New York City was abolished by referendum in 1966. The Philadelphia Police Advisory Board was abolished by executive order in 1967.

Creation of a civilian review procedure by ordinance represents a judgment about the need for civilian review by a majority of the elected representatives in a particular city.

Power

None of the existing civilian review procedures have any power to impose discipline. All have only the power to make recommendations for disciplinary action to the police chief or police commission.

The Survey

The survey represents the first national survey of civilian review procedures in the United States. Researchers at the Criminal Justice Department at the University of Nebraska at Omaha conducted a telephone and mail survey of the fifty largest cities (based on the 1990 Census). Police departments were contacted by telephone and department spokespersons were interviewed concerning procedures for handling citizen complaints. Where a civilian review procedure existed, documents regarding the structure and process of the procedure were requested. These documents were used to verify the information obtained in the telephone interviews.

The Question of Effectiveness

The survey did not address the question of effectiveness. To date, there have been no independent evaluations of the effectiveness of civilian review procedures in the United States.

The number of complaints filed in a particular city, and the rate per population, do not permit meaningful comparisons of

different cities. A low rate of complaints may only reflect a lack of public confidence in the complaint process; a high rate of complaints may reflect public confidence in the process.

Many police departments and civilian review agencies publish summary statistics on the percentage of complaints sustained or not sustained. It is impossible to evaluate those figures without independently investigating the original complaint, how the complaint was handled, and whether the decision was appropriate given the facts of the case.

Other Civilian Review Agencies

The survey studied civilian review procedures only in the 50 largest cities. Additional civilian review procedures exist in Rochester, NY; Hartford, CT; Berkeley, CA; Flint, MI, San Diego County, CA; Dade County, FL. At least six civilian review procedures exist in Canada (Toronto, Montreal, British Columbia, Manitoba, Quebec, the Royal Canadian Mounted Police), four in Australia, and one covering the police in England.⁵

Unanswered Questions: The Need for Further Research

Civilian review is an extremely complex and controversial subject. Many questions about the structure, process, and effectiveness of remain unanswered. The most important questions include:

(1) The Effectiveness of Civilian Review. No independent evaluations of the effectiveness of civilian review have been conducted. Meaningful evaluation could be done through: (a) public opinion surveys to determine whether the existence of a civilian review procedure is associated with more positive evaluations of police performance and/or greater confidence in the complaint process; (b) comparative audits of complaint processes to determine whether civilian involvement is associated with more thorough investigations and/or more recommendations for disciplinary action where complaints have been sustained.

(2) The Administration of Civilian Review Procedures. Existing civilian review procedures vary considerably in terms of their procedures and authority. Some have subpoena power, while others do not. Some conduct public hearings, while others do not. Some have the power to make recommendations about general police policies, while most do not. There are differences in how complaints are accepted for review (at police stations only vs. other locations; in-person vs. in-writing vs. telephone).

⁵ IACOLE, Compendium of International Civilian Oversight Agencies (1989).

Comparative case studies of several local civilian review procedures would begin to serve to identify the conditions of an effective and efficiently-run civilian review procedure.

(3) The Politics of Civilian Review. Civil rights activists have been calling for civilian review of the police for over thirty years. Until recently they have been largely unsuccessful. The recent growth of civilian review procedures suggests a significant change in the political context. What factors are associated with the creation of a local civilian review procedure? Changing city demographics? A new majority on city council? Mayoral leadership? A decline in the effectiveness in opposition from the police department?

TABLE 2
CIVILIAN REVIEW AGENCIES, BY DATE OF CREATION**

1991 Toledo Long Beach	1983 San Francisco New Orleans Kansas City
1990 Houston Minneapolis	1982 Portland Tucson
1989 Indianapolis St. Louis Fresno	1981 1980 District of Columbia Oakland
1988 San Diego Dallas Cleveland	1979 Cincinnati 1977 Milwaukee Baltimore
1987 New York City Albuquerque	1975 Omaha 1974 Detroit Chicago
1986 Phoenix Miami Pittsburgh	1972 Honolulu
1985	
1984 Atlanta	

**Dates indicate year authorized. Some agencies were authorized in one year but not operational until a year later. Dates also indicate the year the agency obtained authority over civilian complaints. Some agencies were established earlier but did not have responsibility over civilian complaints.

TABLE 1
Civilian Review Agencies
In the 50 Largest
U.S. Cities

CITY	NAME OF ORGANIZATION	DATE EST.	ENABLING AUTHORITY	CLASS	# OF MEMBERS	METHOD OF APPT. BOARD/DIRECTOR	RESPONSIBILITIES	OTHER CHARACTERISTICS
New York, NY	Civilian Complaint Review Board	1987	Ordinance	II	12	6- by mayor 6- by Council	reviews all citizen complaints--makes recommendations	also makes training and policy recommendations to police agency
Los Angeles, CA	Internal			None				
Chicago, IL	Police Board (Office of Professional Standards)	1974	Ordinance	I	20	by mayor (approved by council)	receives & investigates all complaints of police misconduct--makes recommendations	the Office of Professional Standards operates under the authority of the police board, separate from the police department
Houston, TX	Civilian Review Committee	1990	Ordinance	II	21	by mayor	reviews complaints of excessive force, serious bodily injury, or death	the Review Committee has 21 members divided into 3 separate panels
Philadelphia, PA	Internal			None				

San Diego, CA	Citizen Review Board	1988	Ordinance	II	20	By City manager	reviews all citizen complaints--makes recommendations	
Detroit, MI	Board of Commissioners (Office Chief Investigator)	1974	Ordinance	I	5	By mayor (approved by council)	receives & investigates all complaints makes recommendations	the Office of the Chief Investigator handles all investigations and is staffed by civilian investigators
Dallas, TX	Citizen's Police Review Board	1988	Ordinance	II	13	by city council	reviews shooting & other complaints, makes-- recommendations	
Phoenix, AZ	Disciplinary Review Board	1986	administrative Order	III	5		reviews disciplinary decisions--makes further recommendations	the Disciplinary Review Board consists of four sworn officers and one citizen
San Antonio, TX	Internal			None				
San Jose, CA	Internal			None				

Indianapolis, IN	Citizens Police Complaint Board (Office of Citizen Police Complaints)	1989	Ordinance	11	9	3- by mayor 3- by council 3- by police (sworn)	reviews complaints of excessive use of force abuse of authority, and discourtesy--makes recommendations	the Office Citizen's Police Complaints is an investigative office headed by a director appointed by the Public Safety Director
Baltimore, MD	Complaint Evaluation Board	1977	State Statute	11	7	the board consists of 7 state agency heads or their delegates	reviews complaints of discourtesy and excessive use of force--makes recommendations	
San Francisco, CA	Office of Citizens' Complaints	1983	Ordinance	1	1	Director appointed by Police Commission	receives & investigates all complaints--makes recommendations	the Office of Citizen Complaints is headed by one director who conducts investigations & recommends
Jacksonville, FL	Internal			None				
Columbus, OH	Internal			None				

Milwaukee, WI	Fire & Police Commission	1977	State Statute	1	5	By Governor	receives & investigates complaints of excessive force and abusive language--makes recommendations	investigates and reviews allegations of misconduct against all public employees
Memphis, TN	Internal			None				
Washington, DC	Civilian Complaint Review Board	1980	Ordinance	1	7	Mayor (approved by Council)	receives & investigates all citizen complaints--makes recommendations	
Boston, MA	Internal			None				
Seattle, WA	Internal			None				
El Paso, TX	Internal			None				
Nashville, TN	Internal			None				
Cleveland, OH	Police Review Board	1988	Ordinance	1	5	by mayor (approved by council)	reviews citizen complaint--makes recommendations	the Office of Professional Standards, under the Public Safety Director, is composed of both civilians and sworn staff and investigates all complaints of police misconduct

New Orleans, LA	Office of Municipal Investigation	1983	Ordinance	1	1	Director appointed by mayor	investigates and reviews all complaints of police misconduct--makes recommendations	the Office of Municipal Investigation conducts investigation and review of misconduct involving all public employees in the city
Denver, CO	Internal			None				
Austin, TX	Internal			None				
Forth Worth, TX	Internal			None				
Oklahoma City, OK	Internal			None				
Portland, OR	Police Internal Investigations Auditing Committee	1982	Ordinance	11	14	committee consists of 3 councilmen (elected)-- plus 11 citizens	reviews cases designated as serious ones--makes recommendations	

Kansas City, MO	Office of Citizen Complaints	1983	executive order	II	1	Director appointed by mayor	reviews all complaints of police misconduct--makes recommendations	the Office of Citizens Complaints has a 5 member staff headed by a director who reviews cases and makes recommendations
Long Beach, CA	Citizen Police Complaint Commission	1991	Ordinance	I	11	by mayor (approved by council)	investigates and reviews complaints of police misconduct, excessive force, false arrest, and racial or sexual overtones--makes recommendations.	the Commission has an independent investigator not associated with the police department who conducts all investigations
Tucson, AZ	Citizens' Police Advisory Committee	1982	Ordinance	III	13	by city council--the Police Chief and City Manager are members also	serves as appellate review in cases alleging inadequate policies and procedures or violation of existing procedures	the Committee is comprised of both sworn and non-sworn personnel
St. Louis, MO	Board of Commissioners	1989	state statute	III	4	by Governor (approved by Senate)	serves as appellate review in cases alleging police misconduct	

Charlotte, NC	Internal			None				
Atlanta, GA	Civilian Review Board	1984	administrative order (mayor)	11	22	by mayor (approved by council)	reviews complaints of excessive force, serious bodily injury, or death-- makes recommendations	the Review Board consists 22 members divided between 4 panels--board also reviews complaints against the Department of Corrections
Virginia Beach, VA	Internal			None				
Albuquerque, NM	Independent Counsel	1987	Ordinance	11	1	by city council	reviews complaints and findings of internal affairs in allegations of police misconduct	the Independent Counsel is an attorney hired by the city council who reviews police internal investigations
Oakland, CA	Citizens' Complaint Board	1980	Ordinance	1	7	by mayor (approved by council)	investigates and reviews complaints of excessive force; appellate review of case of non-force-- makes recommendations	the board has original jurisdiction over complaints of excessive force and appellate jurisdiction over non-force complaints

Pittsburgh, PA	Office of Professional Responsibility	1986	Ordinance	II	1	Chief Investigator appointed by public safety director	investigates and reviews complaints of misconduct--makes recommendations	investigates and reviews all public safety employee complaints--office has 4 support staff member
Sacramento, CA	Internal			None				
Minneapolis, MN	Civilian Police Review Authority	1990	Ordinance	I	7	4- by council 3- by mayor (approved by council)	investigates and reviews all complaints of police misconduct--makes recommendations	To begin operation April 1991
Tulsa, OK	Internal			None				
Honolulu, HI	Police Commission	1972	Ordinance	I	7	by Governor	investigates and reviews complaints of misconduct on the part of police employees, including civilian personnel	the Commission utilizes 4 support staff who are full-time paid employees
Cincinnati, OH	Office of Municipal Investigation	1979	Ordinance	I	1	Chief Investigator appointed by mayor	investigates and reviews all complaints of police misconduct--makes recommendations	investigations and reviews complaints involving all city employees

Miami, FL	Office of Professional Compliance	1986	Ordinance	II	11	by city manager (approved by council)	reviews complaints of police misconduct--makes recommendations	
Fresno, CA	Ombudsman's Office	1989	Ordinance	II	1	by mayor (hired)	reviews all complaints involving shots fired, verbal intimidation--makes recommendations	
Omaha, NE	Public Safety Finding Review Board	1975	executive order	III	8	by mayor	conducts appellate review of cases alleging police misconduct	the board consists of the Mayor, Chief of Police, Public Safety Director, Human Relations Director, City Attorney, one city councilman, and two citizen volunteers
Toledo, OH	Civilian Review Board	1991	Ordinance	II	11	by mayor	reviews complaints of police misconduct--makes recommendations	
Buffalo, NY	Internal			None				

EXHIBIT 3

CITY OF SAN JOSE - MEMORANDUM

TO: HOUSING AND COMMUNITY SERVICES
COMMITTEE
SUBJECT: POLICE COMMUNITY RELATIONS PROGRAM

FROM: LOUIS A. COBARRUVIAZ
CHIEF OF POLICE
DATE: JANUARY 24, 1992

APPROVED: 

DATE:

RECOMMENDATION

It is recommended that the Housing and Community Services Committee approve the status report on the Police Department's community relations program.

BACKGROUND

At its September 9, 1991 meeting, the Housing and Community Services Committee requested reports from the Police Department on the components of its community relations program. Those components are: (A) citizen complaint component; (B) officer recognition component; and (C) community relations and outreach component. A memo was submitted for the Committee's January 13, 1992 meeting, during which the Police Department and Administration were requested to provide additional information. This memo expands on and replaces that January 2, 1992 report.

A. Citizen Complaint Component1. Internal Affairs Complaints: Coordination With City Manager's Office

Deputy City Manager Nabar Martinez serves as a contact person to the community and Mayor/Council to receive and track those police misconduct complaints where citizens are hesitant to approach the Internal Affairs Unit unassisted, and review any completed Internal Affairs investigation that a complainant feels is incomplete or improper. A trimester reporting schedule, designed to coincide with the existing management reporting system in the Department, provides status information to the Committee and Council.

For the first report period (July-October 1991), the City Manager's Office received 16 inquiries seeking information either on initiating a misconduct complaint, clarifying the complaint-generation process, or requesting a review of a completed I.A. investigation. Disposition is as follows: two (2) were referred to the Department's Bureau of Field Operations as informational requests and have been closed; two (2) others were referred directly to the Chief of Police as administrative requests; and the remaining 12 were directed to the Internal Affairs Unit. Four of those have been closed, and eight investigations remained open as of October 31.

Some data was collected prior to adoption of the trimester report schedule and provides a broader overview. Between February and December 1991, the Manager's Office received 44 first-contact complaints. Ten of those remain open. To date, six (6) misconduct investigations have been reviewed in detail by the City Manager's Office. Five (5) were found to be fully acceptable and thorough; the remaining case is undergoing further review.

2. First Report on Citizen Complaint Data

The Internal Affairs Unit is responsible for receiving and recording citizen and Department-initiated complaints against members of the Police Department and for conducting a detailed and unbiased investigation of these complaints. The statistical information provided in this report is specific to the first trimester of FY 91-92 (July-October) with a comparison to the same period in FY 90-91.

Every event of misconduct is classified under one or more of the following general headings:

1. Unlawful Arrest
2. Unlawful Search
3. Unnecessary Force (definition includes many lesser forms of force during citizen contacts)
4. Rude Conduct (abusive, threatening, profanity, poor attitude, etc., while on duty)
5. Discrimination (sexual, racial, etc.)
6. Excessive Police Service (harassment, providing confidential information, etc.)
7. Improper Procedure (violation of City policy, duty manual)
8. Delay in Response/Slow Response
9. Failure to Take Action
10. Unofficerlike Conduct (off-duty behavior, violation of the law, drug/alcohol use, misuse of City property, gratuities, bribes, abuse of authority, etc.)
11. Missing/Damaged Property

Upon completion of the investigation, each allegation is assigned one of the following findings:

- a) UNFOUNDED: The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when the individual member(s) or employee(s) named above were not involved in the act or acts which may have occurred.
- b) EXONERATED: The acts which provided the basis for the complaint or allegation occurred; however, investigation revealed that they were justified, lawful and proper.
- c) NOT SUSTAINED: Investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove such allegation.
- d) SUSTAINED: The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
- e) NO FINDING: The complainant failed to disclose promised information to further the investigation. The investigation revealed that another agency was involved and the complainant has been referred to that agency. The complainant wishes to withdraw the complaint. The complainant is no longer available for clarification(s).

Internal Affairs attempts to identify specific patterns and trends in citizen complaints received for individual officers. Officers who are identified as receiving three or more citizen complaints of any type within a 12-month period are contacted and interviewed by the Internal Affairs Commander and the involved officer's immediate supervisor. This intervention counseling is informal and outside the normal disciplinary process.

The purpose of this contact is to reinforce the Department's philosophy on positive interactions with the public. Suggestions to improve the involved officer's conduct are provided as well as the implementation of training in certain situations. Plans are currently under way to develop a peer counseling group chaired by the Chief of Police. The group's main function would be to assist in the intervention counseling process.

The Department's Internal Affairs Unit will also begin the production of interactive video role playing interview scenarios for its investigators. These video scenarios will incorporate a large number of elements calling for interviewer adjustments to cultural, nationality, ethnic and gender-sensitivity matters in their playthrough. One training session was held with the investigative staff during this period where sensitivity issues were discussed.

The attachments following this memo provide data regarding citizen and Department-initiated complaints received for the first report period (July-October) of FY 91-92.

B. Officer Recognition Component - "Community Commitment Award"

The Department's Employee Recognition Committee has approved the addition of a new award which will recognize Department members or specific units that provide exceptionally compassionate and professional services to the residents of San Jose. Called the "Community Commitment" Award, the criteria for this new category will include demonstrated efforts that "build trust, solve community problems, or reduce the fear of crime in the community."

This new award, along with others, is a matter above and beyond the estimated 20 letters of commendation received monthly by the Department for outstanding service, special sensitivities, etc., by its members. The Department has determined that the Community Commitment Award should be incorporated into its existing recognition process. The Employee Recognition Committee, chaired by the Bureau of Administration Deputy Chief and composed of representatives from throughout the Department, meets regularly to review nominations, with their recommendations then forwarded to the Assistant Chief. Department-wide award ceremonies occur approximately ten times a year.

Notification to Department members of this new recognition category will be accomplished by a reissue of the nomination form incorporating the additional award criteria. Members of the community will also be informed of their opportunity to commend the exceptional work of Department members with whom they come into contact. Neighborhood Watch meetings, the Community Forums and Fairs, and other similar occasions will be utilized to publicize the new award. To date, there are two Community Commitment Awards pending. Recipients will be honored during the regularly-scheduled Department ceremonies. The Council and Manager's Office will be informed of these awards and invited to attend.

C. Community Relations and Outreach Component

To enhance the Department's outreach efforts to specific segments of the community as well as residents in general, Community Forums and Community Fairs were selected as vehicles for those purposes. The informational forums, directed toward specific audiences, got underway first. Six were held in 1991 as follows:

<u>Date</u>	<u>Location</u>	<u>Audience</u>	<u>Attendance</u>
3-20-91	Eastside Senior Community Center	Hispanic	15
5-14-91	Afro-American Community Center	African/American	50
6-19-91	Solari Community Center	Vietnamese	30
6-26-91	Cambodian New Life Association	Cambodian/Laotian	10
10-17-91	Billy deFrank Center	Gay/Lesbian	50
12-09-91	Gardner Community Center	Hispanic	20

City staff in attendance usually include: Deputy City Manager Martinez; the Bureau of Field Operations Deputy Chief and Captain; Community Services Division Lieutenant; Internal Affairs Lieutenant; Lieutenant and Sergeant of that police district where the Forum is being held; Sergeant and staff of the Crime Prevention Unit; and police officers representing specialized units such as NET, Traffic, Juvenile, and the Violent Crime Team. After City staff explain their services, responsibilities and procedures, community members have an opportunity to ask questions and voice their concerns. Forums are held in the evenings and last approximately three hours.

Most residents that attended state that the Forums are very positive, that there is an atmosphere for open communications and that they feel the City and Police Department are sincere in trying to establish better communications. Some persons, however, simply utilize this opportunity to vent their frustrations and are not really seeking a dialog. Coming out of all the Forums has been the message that additional outreach services--to schools, churches and neighborhoods--would keep the public better informed about the Department. The need for cross-cultural training for officers was also mentioned consistently.

Publicizing and coordinating the Forums is the responsibility of the Crime Prevention Unit. At least 2,500 fliers are distributed prior to each Forum. These are bilingual, where appropriate. They are sent out through schools, community-based agencies, businesses, and door-to-door in neighborhoods. Public service announcements are written and/or taped for the media. Signs/posters are placed in advance at the centers where the Forums take place.

Two Community Fairs have also been held. In addition to the Police Department, the Fairs involve Fire and the Recreation, Parks and Community Services Department, and include special displays and presentations. Roosevelt Park was the site of the first Fair in August; 75 people attended. In September, the Fair at Prusch Park drew about 25 persons. Police staff on duty for some five hours each of those Saturdays was similar to the Forums, with the addition of the Horse Mounted Unit, motor officers and the command van. Extensive publicity for the events was also done similarly to the Forums.


The cost effectiveness of the International Ethnic and Community Fair should be closely evaluated. Planning, coordinating, implementing and staffing these events is labor intensive and includes overtime expenditures. Public response has not been at the level anticipated or desired. Future outreach efforts of this nature will be more closely monitored in terms of staff hours, publicity costs, and utilization of special equipment, units or displays. The Administration will be developing modified approaches or other alternatives to these efforts.

COORDINATION

This report has been coordinated with the Office of the City Manager.

CONCLUSION

As the Department's community relations program proceeds, additional information will be transmitted to the Committee. Data from the next trimester report period (November-February) will be available in late March.


for LOUIS A. COBARRUVIAZ
Chief of Police

LAC/AB/pb

Attachments

cc: Asst. Chief Mallett
Capt. Low
Lt. Delgado
Sgt. Flores
Deputy City Manager Martinez

SAN JOSE POLICE DEPARTMENT
INTERNAL AFFAIRS

COMMENTS ON DATA:

The following summarizes and highlights statistical data for the first report period of FY 91-92 when compared to the same period in FY 90-91:

- Citizen-initiated complaints are down by 5, a 9 percent decrease (49/54).
- Department-initiated complaints are up by 2, a 15 percent increase (15/13).
- Citizen-initiated cases closed are down by 3, a 7 percent decrease (40/43).
- The highest number of citizen-initiated complaints originated in Council District #3 (12 complaints). This number is consistent with the prior reporting period.
- The lowest number of citizen-initiated complaints originated in Council District #2 (1 complaint).

SAN JOSE POLICE DEPARTMENT

INTERNAL AFFAIRS

A Summary of all Citizen Injured Cases by Council District

<u>COUNCIL DISTRICT</u>	<u>Jul-Oct '91</u>	<u>Jul-Oct '90</u>
1	3	4
2	1	4
3	12	11
4	6	1
5	8	6
6	3	5
7	5	10
8	4	9
9	4	1
<u>10</u>	<u>3</u>	<u>3</u>
Total	49	54

1/17/92

**SAN JOSE POLICE DEPARTMENT
INTERNAL AFFAIRS**

SUMMARY OF CASES RECEIVED

**BY COUNCIL DISTRICT
1ST REPORTING PERIOD
FISCAL YEAR 1991-92
(JAN through OCT)**

CITIZEN INITIATED CASES 49

	UN- LAWFUL ARREST	UN- LAWFUL SEARCH	UN- NECESS. FORCE	RUDE CONDUCT	DIS- CRIMTN/ HARASS.	EXCESS POLICE SVC	IM- PROPER PROCEDR	DELAY IN RESP.	FAILURE TO TAKE ACTION	UN- OFCLIKE CONDUCT	MISSING DAMAGED PROP.	TOTAL	%
Council Distr:													
1	0	0	1	0	1	1	0	0	0	0	0	3	6.12
2	0	0	1	0	0	0	0	0	0	0	0	1	2.04
3	0	0	8	3	0	0	1	0	0	0	0	12	24.49
4	1	0	4	0	0	0	0	0	1	0	0	6	12.24
5	0	0	6	1	0	0	0	0	1	0	0	8	16.33
6	0	0	2	1	0	0	0	0	0	0	0	3	6.12
7	0	0	2	2	0	0	0	0	0	0	1	5	10.20
8	0	0	2	1	0	0	0	0	0	0	1	4	8.16
9	0	0	3	1	0	0	0	0	0	0	0	4	8.16
10	0	0	0	2	0	0	0	0	0	0	1	3	6.12
Total	1	0	29	11	1	1	1	0	2	0	3	49	100
%	2.04	0.00	59.18	22.45	2.04	2.04	2.04	0.00	4.08	0.00	6.12	100.0	

Case count reflects number of citizen complaints by event of misconduct which at times could include more than one allegation. Categories determined by the prevailing issue of each misconduct event.

CASES CLOSED DURING

[illegible][illegible][illegible]

1/17/92

**SAN JOSE POLICE DEPARTMENT
INTERNAL AFFAIRS**

SUMMARY OF CASES RECEIVED

BY COUNCIL DISTRICT
1ST REPORTING PERIOD
FISCAL YEAR 1990-91
(JUL through OCT)

CITIZEN INITIATED CASES 54

	UN- LAWFUL ARREST	UN- LAWFUL SEARCH	UN- NECESS. FORCE	RUDE CONDUCT	DES- CRIMTY HARASS.	EXCESS POLICE SVC	IM- PROPER PROCEDR	DELAY IN RESP.	FAILURE TO TAKE ACTION	UN- OFCLIKE CONDUCT	MISSING DAMAGED PROP.	TOTAL	%
COUNCIL DISTRICT:													
1	0	0	3	0	0	0	0	0	0	1	0	4	7.41
2	0	0	2	0	0	0	0	0	0	2	0	4	7.41
3	0	0	7	0	0	0	1	0	1	2	0	11	20.37
4	0	0	0	0	0	0	1	0	0	0	0	1	1.85
5	0	0	6	0	0	0	0	0	0	0	0	6	11.11
6	0	0	4	1	0	0	0	0	0	0	0	5	9.26
7	0	0	6	3	0	0	0	0	0	1	0	10	18.52
8	1	0	4	2	0	0	1	0	1	0	0	9	16.67
9	0	0	0	1	0	0	0	0	0	0	0	1	1.85
10	0	0	0	1	0	0	1	0	0	0	1	3	5.56
Total	1	0	32	8	0	0	4	0	2	6	1	54	100
%	1.85	0.00	59.26	14.81	0.00	0.00	7.41	0.00	3.70	11.11	1.85	100.0	

EXHIBIT 4

GENERAL ORDER NO: 2.3 (REVISED 6/86)

SUBJECT: DEPARTMENT POLICY AND OPERATIONAL PROCEDURES FOR THE
INTERNAL AFFAIRS UNIT

PURPOSE: TO ESTABLISH DEPARTMENT POLICY AND OPERATIONAL
PROCEDURES FOR THE INVESTIGATION OF CITIZEN COMPLAINTS.
TO COMPLY WITH SECTION 832.5 OF THE CALIFORNIA STATE
PENAL CODE.

DEFINITIONS:

Personnel Defined

1. All employees, sworn and non-sworn, under the control of the Sheriff.
2. Any other person associated with the department whose actions or conduct may tend to bring discredit upon the department.

Complaint Defined

1. A complaint is an allegation of misconduct committed by any person described under the definition of personnel.

Misconduct Defined

1. Commission of a criminal offense.
2. Violation of department policies, rules, regulations, procedures or orders.
3. Negligence in the performance of duty.
4. Conduct which reflects unfavorably upon the department or its personnel.

POLICY

- A. It shall be the policy of this department to receive, record and thoroughly investigate all citizen complaints alleging misconduct on the part of department personnel.
- B. It should be emphasized that the Internal Affairs Unit is a fact finding body and equally as interested in establishing innocence as guilt.
- C. The public is encouraged to report matters of misconduct to the unit, openly and with identification, or anonymously, if this is the complainant's wish.

- D. The Internal Affairs Unit is concerned with serious violations on the part of personnel. It does not involve itself in procedural inadequacies.
- E. The Internal Affairs Unit shall not concern itself with criminal investigations involving department personnel unless specifically assigned to conduct such investigations by the Sheriff - Undersheriff.
 - 1. Such criminal investigations will normally be assigned to the Detective Division.
 - a. These assignments will be made by the Sheriff - Undersheriff, and the assigned detectives will report directly to the assigning authority.
 - 2. When during the course of an Internal Affairs Investigation it becomes apparent that there has been a criminal violation, the Sheriff - Undersheriff will make the determination as to who should continue the investigation, Internal Affairs - Detective Division, or both.

A concurrent investigation by both Detective and Internal Affairs officers may, upon occasion, be desirable; Detective to determine criminal responsibility, and Internal Affairs to determine administrative responsibility.

PROCEDURE:

- F. The Internal Affairs Unit shall be responsible to, and report directly to the Sheriff - Undersheriff.
- G. The Internal Affairs Unit clearly has responsibility and authority to conduct thorough and impartial investigations of the following situations or circumstances, and to make appropriate reports.
 - 1. Any allegation or complaint of misconduct made by any person against the department or any of its personnel.
 - 2. Any alleged or suspected breach of integrity or case of moral turpitude.
 - 3. Any situation in which a person has been injured or killed by an officer of this department.
 - a. The Detective Division will be responsible for the criminal investigation.

- b. The Internal Affairs Unit will be responsible for the administrative investigation (Refer G.O. #3:4, C).

- H. During normal business hours, all citizen complaints alleging misconduct on the part of departmental personnel will be referred directly to the Internal Affairs Unit.

Should the complaint be received by the Division Commander, and it is of such a minor nature that he can rectify the situation to the mutual satisfaction of both parties, no further action need be taken.

- I. During other than normal business hours, all citizen complaints will be referred to the highest ranking officer on duty in the involved division.

- 1. The officer will receive the complaint from the reporting party and pursue one of the following alternatives:

- a. If the complaint is of such a serious nature that immediate action is required, the officer will, after receiving authorization from the Undersheriff, advise the Internal Affairs Commander to respond to and initiate an immediate investigation into the allegation.

- b. If the complaint does not require immediate action the officer will record the complainant's name, address, and telephone number and forward that information via memo to the Internal Affairs Commander along with a synopsis of the allegation.

- (1) The officer will advise the reporting party that they will be contacted by the Internal Affairs Unit on the next working day.

- (2) The Internal Affairs Unit shall, on the next working day, make contact with the reporting party and obtain a complete complaint.

- c. If the complaint is of such a minor nature that the officer can rectify the situation to the mutual satisfaction of both parties, no further action need be taken.

- d. The officer shall, after following one of the above alternatives, notify via memo, the Undersheriff and the concerned Division commander that a citizen's complaint has been received and provide a brief synopsis of the allegation.

2. Complaint regarding procedural inadequacies will be referred directly to the commander of the concerned division.
- J. Upon receipt of a citizen's complaint, the Internal Affairs Unit shall take the following action:
1. The complaint will be reduced to writing, and that report immediately forwarded to the Sheriff - Undersheriff for his review.
 2. After review by the Sheriff - Undersheriff, the complaint may be assigned to one or more of the following units for immediate investigation.
 - a. Detective Division, if criminal.
 - b. Internal Affairs Unit, if administrative.
 - c. Division Commander, if deemed appropriate.
 3. The Internal Affairs Unit shall conduct thorough and impartial investigations into all complaints which are assigned to such unit.
 4. The Division Commander of the involved personnel will be advised of the situation and circumstances of the allegation.
 5. In all cases, except where disclosure would adversely affect the investigation or where disclosure would identify a complainant who wishes to remain anonymous, the involved personnel will be made aware at the outset that a complaint has been received and that they are the subject of an investigation, and at that time will be afforded the opportunity to prepare written reports, secure witnesses, and gather any other information pertinent to the complaint.
- K. Upon completion of the investigation, the Internal Affairs Unit will prepare a complete written report to include, but not limited to:
1. The original and subsequent statements of the reporting party.
 2. Statements of all witnesses.
 3. Description and analysis of all evidence.
 4. Statements of any and all involved personnel.

5. Statements of fact as determined by the Internal Affairs investigating unit.
6. Statement of findings.
 - a. UNFOUNDED: Where the investigation shows that the act or acts complained of did not occur, or where misconstrued.
 - b. EXONERATED: Where the acts which provided the basis for the complaint occurred, but the investigation shows such acts justified, lawful, and proper.
 - c. NOT SUSTAINED: Where the investigation fails to disclose sufficient facts to prove or to disprove the allegation made in the complaint.
 - d. SUSTAINED: Where the investigation discloses sufficient facts to prove the allegations made in the complaint.
- L. The completed investigation file shall be delivered to the assigning authority for his review and approval.
- M. In all cases resulting in a finding of other than sustained, the matter may be referred to the concerned Division Commander for review.
- N. In all cases resulting in an approved finding of "Sustained," the matter will be referred to the appropriate Division Commander for his recommendation of corrective action to be taken. The Division Commander's recommendation for corrective action together with the investigation file will then be directed to the Assistant Sheriff responsible for that division. The Assistant Sheriff will note his recommendation for corrective action and forward the recommendation and investigative file to the Sheriff/Undersheriff for his review and/or imposition of corrective action.
- O. When corrective action has been taken, that information shall be forwarded to the Internal Affairs Unit to be included in the case file. The investigative file will be retained in the Internal Affairs Unit with a copy of the charges and finding being forwarded to the involved personnel, the Division Commander, the Assistant Sheriff, the Undersheriff and the employee's personnel folder via the Personnel and Training Division.

The exception would be in a "Sustained" finding of a minor nature, where corrective action results in nothing more than counseling or an oral reprimand. In those cases nothing would be forwarded to the employee's personnel folder.

- P. Where corrective action taken is appealable to the County Personnel Board and employee does invoke his right to appeal, a copy of the completed investigation file will be delivered to County Counsel for his use during the appeal hearing.
- Q. In cases resulting in an approved finding of other than "Sustained," the information and statements acquired during the course of the investigation will remain confidential and will be retained in the files of the Internal Affairs Unit. A copy of the statement of findings (Paragraph K.6, above) will be forwarded to the involved personnel, the Division Commander, the Assistant Sheriff, and to the Sheriff - Undersheriff.
- R. The Internal Affairs Unit shall, upon the completion of an investigation, notify the complaining party of the results of that investigation.

County of Santa Clara

Office of the Sheriff

1005 Timothy Drive
San Jose, California 95133
(408) 299-2101



Charles P. Gillingham
Sheriff

CITIZEN COMPLAINT FORM

The Santa Clara County Sheriff's Office is responsible for protecting the lives of the citizens of Santa Clara County. Our deputies are highly trained and educated. They serve with professional pride, and they want you, the citizen, to share this pride.

The deputies assigned to Field Operations respond to more than 177,751 calls for service annually. Deputies serve as arbitrators in thousands of cases when they are asked to resolve differences between individuals or groups. Many times the decisions made by the deputies will restrict the freedom and liberty of these persons. Often these decisions materially affect the course of people's lives.

We fully realize that our involvement in these complex and often emotionally charged situations may not always result in a level of performance you, the citizen, have grown to expect. For this reason, the Sheriff's Office has a well-defined procedure for assisting citizens who wish to voice their grievances against our operations, policies, or employee conduct.

All investigations are thorough and objective and are aimed at maintaining public confidence and departmental integrity. The goal is neither to condemn nor to exonerate, but rather to identify and evaluate all the facts surrounding the incident in question.

Effect on Criminal Prosecution: The investigation within the Sheriff's Office of the conduct of its officers, and the District Attorney's prosecution of a criminal case are two entirely separate matters. If a person arrested by Sheriff's Officers files a citizen's complaint against those officers, such action will in no manner affect the prosecutor's independent decision to proceed with the criminal action.

Citizen's Obligation: A mandatory requirement in the making of a citizen's complaint against an officer is that it be made as accurately and honestly as possible. Simple errors, omissions, and misperceptions are understandable and not uncommon.

A complaint which is false, however, and made with knowledge of its falsity, and made with spite, hatred, or ill will, which accuses an officer of misconduct, criminal conduct, or incompetence, will expose the maker of such false complaint to a civil action brought by the officer. (CONTINUED ON OTHER SIDE)

This advisement is made not to dissuade the making of a bona fide complaint, for such complaints should be made and investigated. It is directed only to those few individuals who believe that false complaints against officers can be made with impunity.

Procedure: Every citizen has the right to lodge a complaint against either the Sheriff's Office or any individual member employed by the department. Complaint forms are available at all Sheriff's Office facilities. While personal contact is desirable, initial complaints may be made by telephone or letter. The attached form should be completed and returned to the Internal Affairs Unit.

When a complaint is received, it is forwarded to the office of Internal Affairs Investigations. A thorough investigation will be conducted. Upon completion of the investigation, all findings are directed through divisional supervisors, along with their respective recommendations, to the Sheriff for his final decision.

In all cases the citizen making the complaint is informed of its final disposition to the extent allowed by law. Although department investigators will exert every effort to uncover the truth of each situation, in those instances where the citizen feels that a proper investigation has not been conducted, the Sheriff's Office urges that person to seek further recourse through any of the outside agencies listed below.

SANTA CLARA COUNTY
OFFICE OF THE SHERIFF
INTERNAL AFFAIRS INVESTIGATIONS
1005 Timothy Drive
San Jose, CA 95133
(408) 299-2218

FEDERAL BUREAU OF
INVESTIGATION
950 South Bascom Ave.
Suite 3011
San Jose, CA 95128
(408) 998-5633

SANTA CLARA COUNTY
DISTRICT ATTORNEY'S OFFICE
70 W. Hedding Street
San Jose, CA 95110
(408) 299-7500

SANTA CLARA COUNTY
HUMAN RELATIONS COMM.
70 W. Hedding Street
San Jose, CA 95110
(408) 299-2206

CALIFORNIA DEPARTMENT
OF JUSTICE
4949 Broadway
Sacramento, CA 95820
(916) 631-1622

U.S. EQUAL OPPORTUNITY
COMMISSION
96 N. Third Street
Suite 200
San Jose, CA 95112
(408) 291-7352

SANTA CLARA COUNTY
EQUAL OPPORTUNITY DIVISION
70 W. Hedding Street
8th Floor
San Jose, CA 95110
(408) 299-2743

YELLOW PAGES - ATTORNEY OF
CHOICE

AMERICAN CIVIL LIBERTIES
UNION - LOCAL CHAPTER
P.O. Box 215
LOS GATOS, CA 95030
(408) 293-2584

INTERNAL AFFAIRS UNIT
COMPLAINT FORM

of Incident: _____

of Incident: _____

COMPLAINANT:

COMPLAINANT #2/WITNESS:

Name _____

Address _____

Zip _____ Address _____

Phone _____ 8AM-5PM _____ Res. Phone _____ 8AM-5PM _____

Phone _____ 8AM-5PM _____ Bus. Phone _____ 8AM-5PM _____

LOCATION OF OCCURRENCE: _____

INVESTIGATIONS:

ASSOCIATED POLICE REPORT #/CITATION: _____

INVOLVED EMPLOYEE(S):

BADGE #

DIVISION

STATEMENT

County of Santa Clara

Office of the Sheriff

1005 Timothy Drive
San Jose, California 95133
(408) 299-2101



Charles P. Gillingham
Sheriff

Date, 1992

Name
Address
City, CA 95

Dear M

The complaint you lodged with this office has been investigated. It has been determined that a proper finding in this matter is unfounded.

UNFOUNDED: Where the investigation shows that the act or acts complained of did not occur, or were misconstrued.

The Assistant Sheriff, Division Commander and the Assistant Division Commander of the involved employees concur with this finding.

Thank you for taking the time to bring this matter to our attention.

If you have any questions, please contact me at (408) 299-2218. You may also contact Assistant Sheriff at (408)

Sincerely,

CHARLES P. GILLINGHAM, SHERIFF

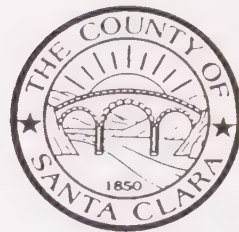
By

Don Zies #1022, Sergeant
Internal Affairs Unit

DZ:pv

County of Santa Clara
Office of the Sheriff

1005 Timothy Drive
San Jose, California 95133
(408) 299-2101



Charles P. Gillingham
Sheriff

Date, 1992

Name
Address
City, CA 95

Dear M

The complaint you lodged with this office has been investigated. It has been determined that a proper finding in the matter is exonerated.

EXONERATED: Where the acts which provided the basis for the complaint occurred, but the investigation shows such acts justified, lawful, and proper.

The Assistant Sheriff, Division Commander, and Assistant Division Commander of the involved employee concur with this finding.

Thank you for taking the time to bring this matter to our attention.

If you have any questions, please contact me at (408) 299-2218. You may also contact Assistant Sheriff at (408) 299-

Sincerely,

CHARLES P. GILLINGHAM, SHERIFF

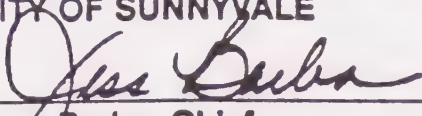
By

Don Zies #1022, Sergeant
Internal Affairs Unit

DZ:pv

EXHIBIT 5

DEPARTMENT GENERAL ORDERS MANUAL
PUBLIC SAFETY DEPARTMENT
CITY OF SUNNYVALE


Jess Barba, Chief

CHAPTER 6
PART 6.8
SECTIONS 6.8.01 - 6.8.11

DATE January 1991
(*Denotes Revised Section)

CHAPTER TITLE:

SUBJECT:

PERSONNEL ADMINISTRATION

CITIZEN COMPLAINTS &
PERSONNEL INVESTIGATIONS

6.8.01 CITIZEN'S COMPLAINTS - POLICY

- A. A proper relationship based upon confidence and trust between the Public Safety Department and the citizens of Sunnyvale is essential to the effective achievement of goals and objectives of the Department. Officers must be free to exercise their best judgment in order to initiate action in a reasonable, lawful and impartial manner. They must, at the same time, protect and respect the rights of all concerned.
- B. In order that the Public Safety Department remain responsive to the needs of the public, it must seek out, accept, interpret, and carefully consider any and all expressions of concern with Public Safety practices which are offered by the citizens who come into contact with personnel of the Public Safety Department.
- C. All citizens have a vested interest in the effectiveness of the Public Safety Department's manner of discharging its' duties. Any Public Safety Department employee who discourages a citizen from providing an expression of concern, or from lodging a complaint has caused a disservice to the citizen, compromised the official policy of the Department, and, may well be subject to criminal prosecution for violation of Penal Code Section 832.5.
- D. An appreciation of the philosophy stated in this policy imposes upon the Public Safety Department a duty to provide a system for: Complaint reception, evaluation and investigation, and a system which provides for corrective measures to be taken when deemed appropriate, and, at the same time, protect against unwarranted criticism when the circumstances complained about are found to have been proper.
- E. A necessary factor that must exist in the Department's system is a mechanism for careful analysis of the results of a complaint investigation. The mechanism must provide for a review of facts that allows separation of findings between propriety of personnel actions as opposed to the adequacy and continued desirability of existing policies and practices. It can occur that upon investigation of a complaint

against an Officer, it is determined that the Officer's actions were within the purview of Department policy and practices. However, upon closer analysis, it is determined that the policy or practice is inappropriate or in need of revision. Therefore, it is essential to recognize that complaint investigations also provide for inspection and review of Department policy and practice.

1. When the finding is that an Officer acted in conformance with policy or practice, but such practice or policy is found to need revision, the complainant is to be notified of the Department's intent to take action to revise the policy or practice.

6.8.02 APPLICATION

- A. Whenever an official personnel investigation is conducted for the purpose of determining facts concerning an employee's alleged misconduct, the investigation shall be conducted in compliance with these policies and procedures.
- B. The policies and procedures do not apply to supervisors or certain Officers who make spontaneous inquiries during the course of their ordinary duties such as instructing, directing, inspecting, counseling, or the making of informal verbal admonishments (3303(h) GC).

6.8.03 LEGAL REQUIREMENTS - 832.5 PENAL CODE

California Penal Code Section 832.5 states that each Sheriff's Department and each City Police Department in this State, shall establish a procedure to investigate citizen's complaints against personnel of such departments, and shall make a written description of the procedure available to the public.

6.8.04 COMPLIANCE

- A. A summarized public notice, "Complaints Against the Policies, Procedures or Employees of the Sunnyvale Department of Public Safety" (Form PS-114), is to be given to any person upon inquiry about Department personnel, policies, or procedures. A supply of readily accessible notices shall be kept in the reception area of the Public Safety Headquarters front lobby.
- B. Section 6.8 of the Department General Orders Manual is not restricted or confidential, and is to be made readily available to any citizen making general inquiry about Department personnel, policies, or procedures and about how complaints are processed.

6.8.05 DEFINITIONS

- A. Complaints Against Personnel of the Department - An allegation that an employee has committed, or is likely to commit an act which is a violation of law, or official orders, or policies of the Department, or the City.
- B. Complaints Against Department Policy or Practices - A criticism of policies, procedures, or actions of the Department including conduct required by law, or official orders of the Department or the City.
- C. Personnel Investigation - An investigation concerning an allegation of employee misconduct, the nature of which, if sustained, might result in punitive action such as a criminal charge, or disciplinary action as may be determined appropriate by the Chief.
- D. Punitive Action - An action which results in dismissal, demotion, suspension, reduction of salary, or written reprimand. (Government Code 3303)
- E. Confidential Notes and Reports - Reports of complaints to, or investigations conducted by, or records of intelligence information, or security procedures of the Department may be deemed confidential and available only to those who can successfully demonstrate a "need to know". (Government Code 6254)
- F. Interrogate - To officially seek answers or information which the questioned person may consider personal or secret.
- G. Authorized Investigation - A Personnel Investigation which is authorized and directed by the Chief, or an officially designated subordinate.
- H. Misconduct
 - 1. Conduct which is contrary to the spirit and intent of the declared standards of conduct as stated in Section 20.00 of the City of Sunnyvale Civil Service Rules and Regulations, City Administrative Policies, Department General Orders, (or)
 - 2. Conduct which tends to compromise services, or reflects unfavorably upon the Department or City, (or)
 - 3. Conduct which constitutes a violation of any statute.
- *I. Documented Complaint - Any citizen's complaint that has been documented pursuant to DGOM Section 6.8.07.B.

6.8.06 DIRECTING AND ASSISTING COMPLAINANTS

- A. In order to effectively discharge the duties and responsibilities of a public service agency, the respect, confidence, and cooperative support of the community must be encouraged and fostered. Individual employees are representatives of the Public Safety Department, and as such, are subject to public scrutiny and evaluation. It is, thus, that they are influential in establishing the degree of public esteem in which the Public Safety Department is held in the community.
- B. The Director of Public Safety discharges a responsibility to individual employees, their families, the Public Safety Department goals and objectives, and ultimately the community at large, by insisting that all personnel maintain a standard of performance and conduct which is beyond public reproach. In carrying out his responsibilities, the Director of Public Safety must provide for the thorough and objective examination of circumstance whenever substandard performance, or conduct is alleged, or suspected.
- C. Any sworn employee whose duties involve public contact may accept an initial complaint against personnel, procedures, or policies of the Department.
1. Experienced full-time employees who have sufficient knowledge regarding the subject of the complaint should offer an explanation when it appears that the complainant is basing the complaint on a misunderstanding, or lack of knowledge of acceptable and desirable conduct, procedures, or practices of the Department.
 - * 2. Employees need to exercise extreme care in their evaluation of a complaint and their capability to accurately convey procedures or practices to the complainant. Whenever there is any doubt concerning an employee's ability or authority to provide accurate information on the subject of an inquiry, the employee shall refer the inquiry or complaint to the next higher authority within the organizational structure of the Department.
 - * 3. It should be explained to the complainant that the Director of Public Safety is always willing to talk with any citizen. It is usually more efficient to first work with the supervisors and managers under the Chief's command. The Chief reviews all documented complaints and must be satisfied with the thoroughness of the investigation before approving the findings.
 - * 4. The Command Officer or designated employee receiving a complaint from a citizen has the responsibility for assuring that Department policies and procedures for investigation of complaints are thoroughly explained and understood by the complainant.
 - * 5. A complainant may be referred directly to the Chief by the City Manager or any elected official of the City.

***D. Third Party Complaints**

1. It is not uncommon for the Department of Public Safety to receive a complaint from a party who was not involved in the actions which gave rise to the allegation(s). Such cases usually involve spouses, parents, neighbors, attorneys, or friends of the person purported to have been aggrieved by actions of an employee of the Public Safety Department.
2. It shall be the expressed policy of this Department that all such allegations which become known to any member of the Department - irrespective of the source of the allegation - shall be treated in the same manner as if the aggrieved party had lodged the complaint directly with the Department.

***6.8.07 DOCUMENTATION & REFERRAL OF CITIZENS COMPLAINTS**

A. When an employee has determined after an initial interview with a complainant that:

1. The complaint is not based on a misunderstanding, or lack of knowledge of acceptable and desirable conduct, procedures, or practices of the Department, (or)
2. The complainant is not satisfied with an explanation of Department policies and procedures,

the employee shall fill out a Complaint Referral Form and notify the complainant that a Public Safety supervisor will contact them. The Complaint Referral Form shall be immediately forwarded to the on-duty patrol supervisor.

B. The on-duty patrol supervisor shall make contact with the complainant as soon as practical. When it is determined after an initial interview with a complainant that:

1. The complainant believes that remedial action should be initiated by the Department, (or)
2. The complainant is not satisfied with an explanation of Department policies and procedures, (or)
3. There has been a violation of policies, procedures, or conduct required by law or official orders of the Department or the City by a Department employee, (or)
4. A Personnel Investigation is in order due to the seriousness of the charges, even though the complainant is uncertain of the facts (refer to DGOM Section 6.8.05.C.),

the substance of the allegation(s) is to be documented on a Citizens Inquiry Report (PS-127-1) and forwarded to the Patrol Operations Captain if the complaint is against Patrol Operations personnel, policies, or procedures; or to the Special

Operations Captain if the complaint is against any other Department personnel, policies, or procedures. All documented complaints shall be complete and thorough and shall be forwarded within seven (7) days of receipt of the complaint. Any complaint that may result in a Personnel Investigation (refer to DGOM 6.8.05.C.) shall be immediately forwarded.

- a. There is no requirement that the complainant sign the complaint form or make the complaint in person.
 - b. The Citizens Inquiry Report is a confidential internal affairs document.
- B. After review of a documented complaint, the Patrol Operations Captain or the Special Operations Captain shall:
1. Approve the finding on a completed documented complaint and forward the completed document to the Police Services Division Commander for concurrence of approval of the finding.
 2. Assign the complaint to a Department supervisor for further followup and disposition.
 3. Refer the complaint up the chain of command for assignment as a Personnel Investigation or for assignment to another Division.

***6.8.08 CONDUCTING AN INVESTIGATION**

A. Assignment of an Investigation

1. Documented complaints that are deemed to be a Personnel Investigation, and documented complaints where no approved finding or disposition has been indicated, will be reviewed by the Director of Public Safety, or the Director's designee, who shall assign an Investigator for the complaint. Upon assignment, the Investigator, irrespective of his/her normally assigned duties, shall report directly to the Chief, or his/her designee, on any matters associated with the complaint investigation.

B. Nature of Investigation

1. A Personnel Investigation may be "Criminal", or "Administrative". A Criminal Personnel Investigation is one which results in the review of the facts by the District Attorney for issuance of criminal charges. An Administrative Personnel Investigation is one which results in the review of the facts by the Chief for recommendation to the City Manager of appropriate punitive disciplinary action in compliance with City Administrative Policies and the City of Sunnyvale Civil Service Rules and Regulations.
 - a. The "Public Safety Officers' Procedural Bill of Rights Act" as enacted by the State Legislature into Chapter 9.7, Division 4, Title I, of the California

State Government Code (Sections 3300 et. seq.) shall be observed in any Personnel Investigation conducted which involves sworn employees of the Public Safety Department.

C. Concurrent Investigations

1. At the time of directing the Personnel Investigation, the Chief shall designate whether the investigation is to be solely "Criminal", or "Administrative", at his/her discretion. The Chief may direct that concurrent criminal and administrative investigations be conducted.
2. If, during the conduct of an in-progress criminal, or administrative personnel investigation, facts come to light which indicate that a parallel Personnel Investigation for Criminal or Administrative purposes is warranted, the Chief may direct that such an investigation be commenced.

D. Immunity

1. No person contacted in the course of a Personnel Investigation is to be advised that a statement will be kept confidential and will not be revealed to a defendant, the Court, District Attorney, etc., nor should any person be offered immunity from prosecution as a condition of giving a statement.
2. In the event that the Chief believes that the importance of a disciplinary action outweighs a possible criminal prosecution, and the granting of immunity from criminal prosecution is vital to the successful conclusion of the investigation, the case shall first be discussed with the District Attorney and only after concurrence is obtained, may the Chief direct that such an offer of immunity be made.

E. Statements

1. Whenever possible, statements obtained during the course of a Personnel Investigation shall be tape recorded. Recording a statement provides for the following:
 - a. Facilitates the interview process for the investigator by eliminating the need to take detailed notes.
 - b. Precludes the possibility that a statement may be misinterpreted, or taken out of context.
 - c. When later transcribed to a typed document, provides for a verbatim statement.
 - d. Precludes the possibility that the person giving the statement may later deny making the statement, or any part thereof.

not involved in the act which may have occurred.

- b. Exonerated - The act(s) which was the basis for the complaint or allegation occurred; however, investigation revealed that it was justified, lawful, and proper.
 - c. Not Sustained - Investigation failed to disclose sufficient evidence to either conclusively prove or disprove the allegation(s) made in the complaint.
 - d. Sustained - Investigation disclosed sufficient evidence to prove, beyond a reasonable doubt, the allegation made in the complaint.
- 2. A Personnel Investigation will be declared terminated and a determination of the appropriate finding(s) shall be made only by the Chief of Public Safety.
 - 3. Concurrent with the above defined findings for a Personnel Investigation, the Chief shall also give careful consideration to the policies and practices which were involved in the incident investigated and assure that appropriate revisions are made when deemed necessary.

6.8.09 CITY MANAGER REVIEW OF FINDINGS

Upon conclusion of an investigation and a determination of finding(s), the Director of Public Safety shall review a report of the complaint, summary of investigation conducted, and findings with the City Manager. The review is for the purpose of assuring the thoroughness, and objectivity of the investigation, and appropriateness of the finding(s).

6.8.10 NOTICE OF FINDINGS AND APPEAL PROCESS

- A. Upon completion of the Chief's review with the City Manager as stated in 6.8.09, the Chief of Public Safety shall notify the complainant of the finding(s) and, if applicable, of any remedial action taken or planned. The complainant shall also be informed that if the finding is not satisfactory, or should clarification be desired, the Chief should be contacted. If the Chief's explanation is not considered sufficient, or the complainant still takes issue with a finding, the complainant may appeal further to the City Manager.
- B. At the same time that notification of findings is given to the complainant, the Chief shall notify the Officer(s) involved in the investigation of the finding(s). If disciplinary action is to be taken, the process for notification of the Officer of the intended action shall be in conformance with Civil Service Rules and City Administrative Policy.

2. If a recorded statement is not possible, the interviewee is to be provided a written report containing the statement and asked to initial any corrections and sign it acknowledging the accuracy of the statement report in reflecting what the interviewee had to say.

F. Retention of Personnel Investigation Files

1. California Penal Code Section 832.7 states that Peace Officer personnel records and records maintained pursuant to citizen complaint investigations are confidential and may not be disclosed in any criminal or civil proceeding except by discovery pursuant to the conditions set forth in Section 1043 of the Evidence Code. Penal Code Section 832.5(b) states: . . "Complaints and any reports or findings relating thereto shall be retained for a period of at least five years."
2. The Director of Public Safety shall assure that a secure file is maintained within the Department wherein all files of Personnel Investigations are retained. Information from such files shall be restricted to access by only those employees of the Department deemed by the Chief to have a "need to know".

G. Conclusion of An Investigation

1. The Chief of the Department may direct a Personnel Investigation concluded when:
 - a. There exist sufficient facts to establish reasonably that a thorough investigation has been conducted and a "finding" can be determined for the allegations, (or)
 - b. The investigation is stymied due to lack of cooperation of a complainant, or other circumstance beyond the control or scope of authority of the Public Safety Department.
2. A concluded Personnel Investigation may be reinstituted at any time that new information or facts are made known to any member of the Public Safety Department. Such new information shall be thoroughly investigated and the original findings weighed against the new information found and adequacy and validity re-evaluated.

H. Findings

1. A "finding" is the conclusion or result reached in a Personnel Investigation in accordance with the following conditions:
 - a. Unfounded - Investigation reveals that the act or acts complained of did not occur. This finding also applies when the accused employee was

6.8.11 ANNUAL REPORT

The Chief of Public Safety shall prepare an annual report for submittal to the City Manager and presentation to the City Council at a public meeting. The report shall contain a synopsis of citizen complaints received, investigation, findings, and, where applicable, remedial action taken. The information contained in the report shall be sufficient to provide a thorough review of the complaints investigated and action taken without compromising the statutory requirements for confidentiality of personnel records.

EXHIBIT 6

~~Dec~~ember 14, 1991

Anthony Boskovich, Esq.
Citizens Review Committee Chair
1024 Emory Street
San Jose, CA 95126

RE: Citizens Review Board

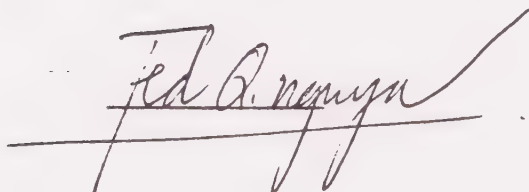
Dear Mr. Boskovich:

(I, We) have been informed by a member of your committee of the County Bar's recommendation that a Charter Commission or Citizens Review Board be established as a mean to oversee and review police misconduct in San Jose.

(I/We) (am/are) writing to express our full support of such proposal and would be happy to provide input, ideas, and suggestions on this proposal.

(You may expand on incidents, experiences, concerns, and beliefs that you, your community, organization, or agency have regarding police misconduct, abuse, and brutality that would warrant such a Charter or Board being established.)

Sincerely,

A handwritten signature in dark ink, appearing to read "Fred A. Nguyen", is written over a horizontal line.

P.S.: I was actually a victim of a mug book



Asian Law Alliance

184 East Jackson Street • San Jose, California 95112-5153
(408) 287-9710

December 20, 1991

Anthony Boskovich, Esq.
Citizens Review Committee Chairperson
1024 Emory Street
San Jose, CA 95126

Re: Citizens Review Board

Dear Mr. Boskovich:

The Asian Law Alliance has been informed by a member of your committee about the Santa Clara County Bar's recommendation that a Charter Commission or Citizens Review Board be established to oversee and review police misconduct in San Jose.

I am writing on behalf of the Asian Law Alliance, to express our full support of such a proposal. I would be happy to provide input, ideas, and suggestions on this proposal.

The Asian-American community is appreciative of the SJPd's work. However, given that there are situations where the police department's law enforcement efforts conflict with the preservation of the civil rights of individuals, I believe a Citizens Review Board may be the best means of protecting the constitutional rights of individuals.

Please call me should you have any questions. Thank you for your attention to this matter.

Sincerely,

ASIAN LAW ALLIANCE

A handwritten signature in dark ink, appearing to read 'Donna S. Yamashiro', with a long, sweeping horizontal line extending to the right.

Donna S. Yamashiro
Attorney



An Viet Foundation

3720 Klein Road, San Jose, California 95148
Telephone (408) 223-2421 Fax (408) 270-4789

San Jose, November 26, 1991

BOARD OF ADVISORS

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Huynh, Nha

Anthony Boskovich, Esq.
Citizens Review Committee Chair
1024 Emory Street
San Jose, CA 95126

Dear Mr. Boskovich,

We have been informed by Minh Q. Steven Dovan, Esq., a member of your committee of the County's Bar recommendation that a Charter Commission or Citizens Review Board be established as a mean to oversee and review police misconduct in San Jose.

We are writing to express our full support of such proposal and would be happy to give input, ideas and suggestions on this proposal.

Sincerely

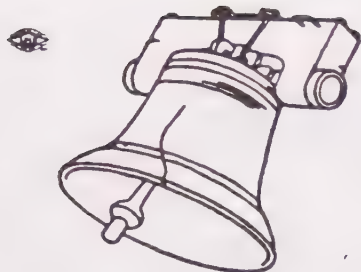
Tong Dinh Lam
Executive Director

STAFF

Tong, Dinh Lam
Executive Director

Nguyen, Quoc Hung, CPA

Nguyen, Thi Cuc
Community Relations



American Civil Liberties Union

SANTA CLARA VALLEY CHAPTER

P.O. Box 215 • Los Gatos, California 95030 • (408) 293-2584

December 7, 1991

RECEIVED
EC 11 1991
S. C. C. B. A

Patrick E. Tondreau, President
Santa Clara County Bar Association
4 North Second Street, Suite 400
San Jose, CA 95113

Dear Mr. Tondreau:

It has come to our attention that the Santa Clara County Bar Association has formed a committee to establish a civilian review board to review actions of the San Jose Police Department.

The Santa Clara Valley Chapter of the ACLU-Northern California heartily endorses and supports this effort.

Approximately 15%-20% of our 50-75 telephone hotline calls per week address some sort of police misconduct.

At this point in time, there is no effective investigative process available to determine the reasonableness of the police conduct. We feel that a civilian review board is urgently needed.

If we can be of any help, please contact us.

Sincerely,

Jon H. Cox, Chairman

EXHIBIT 7

City of
Richmond

Police Commission

FACSIMILE MEMO

City of Richmond FAX Number
(510) 620-6716

DATE: February 24, 1992

TO :

FAX NUMBER

Chris Burdick
Executive Director
Santa Clara County Bar Association
4 North Second Street, Suite 400
San Jose, California 95113

(408) 287-6083

FROM

Donald L. Casimere
City of Richmond

Telephone Number: (510) 620-6532

TOTAL NUMBER OF PAGES (Including this Memo) 12

International Association for Civilian Oversight of Law Enforcement

1204 Wesley Avenue
Evanston, Illinois 60202

BOARD OF DIRECTORS

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Richmond Police Commission
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Civilian Review Board
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Mark Gissiner
Office of Municipal Investigation
Cincinnati, Ohio
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Sean D. Hurley
Garda Siochana Complaints Board
Dublin, Ireland
(01) 728-666 — FAX (353) 746249

Alfredo Davis Porter
Civilian Complaint Review Board
Washington, D.C.
(202) 535-1721 — FAX 535-1724

Darryl J. Raymaker
Calgary Police Commission
Calgary, Canada
(403) 268-8914 — FAX 232-9250

Fernand Simard
RCMP Public Complaints Commission
Ottawa, Canada
(613) 952-2452 — FAX 952-8045

February 24, 1992

Chris Burdick, Executive Director
Santa Clara County Bar Association
4 North Second Street, Suite 400
San Jose, California 95113

Dear Ms. Burdick:

I regret to inform you that I will not be able to attend the meeting of the Citizen Review Ad Hoc Committee this evening. Commitments here in Richmond will not allow my attendance.

I would, however, like to pass along some information that I had intended to share at the meeting tonight. Cities throughout the United States have increasingly felt the need to establish civilian oversight or review agencies.

The International Association For Civilian Oversight of Law Enforcement (IACOLE) consists of approximately 140 members who represent agencies from nine different countries. Most of the member organizations of IACOLE are located in the United States and Canada.

I am forwarding a list of 46 large cities in the United States that currently have some form of citizen review of police. Some agencies are true "oversight" agencies with the power to impose discipline and to implement policy (such as the San Francisco Police Commission). Other agencies are charged with reviewing police policies. Some have the authority and staff to investigate citizen complaints. Other agencies audit police internal affairs investigations, or use citizens who volunteer to serve as an advisory panel to those responsible for providing police services.

Each particular city, county, or jurisdiction, must first decide if citizen review is necessary. If citizen review is deemed to be necessary, the jurisdiction must decide what type of agency is most appropriate.

The collective experience of the members of our association has proven that civilian review has definitely had a positive impact on police services and police community relations. The key has been establishing the type of civilian agency that has the full support of community members and governing bodies.

Please contact me if I can be of additional assistance to you.

Yours truly,



Donald L. Casimere
President

DLC:le

ROSTER OF CIVILIAN OVERSIGHT AGENCIES
UNITED STATES OF AMERICA

CAMBRIDGE, MASSACHUSETTS

Police Review & Advisory Board
Malvina Monteiro
Executive Secretary
831 Massachusetts Avenue
First Floor
Cambridge, MA 02139
617-349-6155

HARTFORD, CONNECTICUT

Hartford Police Department
Investigation Review Board
Ronald Fletcher
Executive Director
Hartford Human Relations Commission
550 Main Street
Hartford, CT 06130
203-722-6477

Ronald Loranger
Chief of Police
Hartford Police Department
50 Jennings Road
Hartford, CT 06120
203-527-6300

NEW YORK, NEW YORK

Civilian Complaint Review Board
Sandra M. Marsh
Deputy Commissioner
295 Lafayette Street
Third Floor
New York, NY 10012-2799
212-323-8750

Mary Burke Nichols
Chairperson
295 Lafayette Street
Third Floor
New York, NY 10012-2799

ALBANY, NEW YORK

Community-Police Relations Board
Francis Alphonso
Executive Director
City Hall Room 254M
Albany, NY 12207
518-434-5184

BALTIMORE, MARYLAND

Complaint Evaluation Board
Neal Janey
City Solicitor
100 North Holliday Street
Baltimore, MD 21202
301-396-3297

PRINCE GEORGE'S COUNTY, MARYLAND

Citizen Complaint Oversight Panel
Robert C. Bonsib, Esq.
Administrator
Largo Government Center
9201 Basil Court
Landover, MD 20785
301-925-5042

Rev. Robert J. Williams
Chairperson
Largo Government Center
9201 Basil Court
Landover, MD 20785

WASHINGTON, DC

Civilian Complaint Review Board
Alfreda Davis Porter
Executive Director
1010 Massachusetts Avenue NW
Fourth Floor
Washington, DC 20001
202-727-6655

Donald Temple
Chairperson
1010 Massachusetts Avenue NW
Fourth Floor
Washington, DC 20001

VIRGINIA BEACH, VIRGINIA

Investigation Review Panel
Cathy B. Foussekis
Administrator
Prince Anne Executive Park
2396 Court Plaza Drive
Virginia Beach, VA 23456-9056
804-427-4802

ATLANTA, GEORGIA

Civilian Review Board
Phillip Terry
Administrative Assistant
Office of the Mayor
55 Trinity Avenue SW
Atlanta, GA 30335
404-658-7731

MIAMI, FLORIDA

Office of Professional Compliance
Joseph Ingraham
Director
400 NW Second Avenue Room 403D
Miami, FL 33128
305-795-2325

ST. PETERSBURG, FLORIDA

A review agency will be operational
by the end of January 1992.

DADE COUNTY, FLORIDA

Independent Review Panel
Wesley A. C. Pomeroy
Executive Director
140 West Flagler Street
Suite 1101
Miami, FL 33130
305-375-4880

PITTSBURGH, PENNSYLVANIA

Office of Professional Responsibility
Carla Gedman
Gateway View Plaza #8
1600 West Carson Street
Pittsburgh, PA 15219
412-255-2804

CLEVELAND, OHIO

Office of Professional Standards
Fred Szabo
Administrator
City Hall Room 15
601 Lakeside Avenue
Cleveland, OH 44114
216-664-2205

Police Review Board
Nona Burney
Chairperson
Law and Public Service
Martin Luther King School
1651 East 71st Street
Cleveland, OH 44103

CINCINNATI, OHIO

Office of Municipal Investigation
James L. Johnson
Chief Investigator
801 Plum Street Room 132
Cincinnati, OH 45202
513-352-3949

DAYTON, OHIO

Citizens' Appeal Board
Thomas A. Paine
101 West Third Street
Dayton, OH 45401
513-443-4026

Jissell Johnson
Chairperson
101 West Third Street
Dayton, OH 45401

TOLEDO, OHIO

Civilian Police Review Board
Jack Fynes
Chairperson
Shumaker, Loop & Kendrick
1000 Jackson Street
Toledo, OH 43624-1573
419-241-9000

INDIANAPOLIS, INDIANA

Office of Citizen-Police Complaints
Brian Reeder
Director
129 East Market Street
Suite 400A
Indianapolis, IN 46204
317-236-3440

Larna Spearman
Chairperson
129 East Market Street
Suite 400A
Indianapolis, IN 46204

CHICAGO, ILLINOIS

Office of Professional Standards
Gayle Shines
Administrator
1024 South Wabash Avenue
Chicago, IL 60605
312-744-1591

Chicago Police Board
Mark Iris
Executive Director
1211 South State Street
Chicago, IL 60605
312-744-6268

Albert Maule
President
Hopkins & Sutter
3 First National Plaza
Suite 3700
Chicago, IL 60602

EVANSTON, ILLINOIS

Police Services Committee
City Council
The Honorable Cheryl Woolin
Chairperson
2100 Ridge Avenue
Evanston, IL 60201
708-328-2100

MILWAUKEE, WISCONSIN

Milwaukee Fire & Police Commission
Michael L. Morgan
Executive Director
749 West State Street
Milwaukee, WI 53233
404-276-2400

M. Nicol Padway
Chairperson
749 West State Street
Milwaukee, WI 53233

DETROIT, MICHIGAN

Detroit Board of Police Commissioners
Odsen Tetreault
Executive Secretary
1300 Beaubien Avenue Room 328
Detroit, MI 48221
313-596-1832

Tom Eder
Chief Investigator
2111 Woodward Avenue
Detroit, MI 48201
313-596-2488

FLINT, MICHIGAN

Ombudsman's Office
Terry Bankert
Ombudsman
225 East Fifth Street Suite 301
Flint, MI 48502
313-766-7335

MINNEAPOLIS, MINNESOTA

Civilian Review Authority
Randall Smith
Executive Director
1111 Third Avenue South
Suite 452
Minneapolis, MN 55404
612-348-9390

Robert Boughton
Convenor
1330 Xerxes Avenue North
Minneapolis, MN 55411

DES MOINES, IOWA

Iowa Citizens' Aide/Ombudsman Office
Michael Ferjak
215 East Seventh Street
Capitol Complex
Des Moines, IA 50319-0231
515-281-3592

ST. LOUIS, MISSOURI

Board of Police Commissioners

Judy Hemman
Administrator
1200 Clark Street
St. Louis, MO 63103
314-444-5601

David Robbins
President
1200 Clark Street
St. Louis, MO 63103

KANSAS CITY, MISSOURI

Board of Police Commissioners

William Ray Price
President
1125 Locust Street
Fifth Floor
Kansas City, MO 64106
816-234-5055

Office of Citizen Complaints

Willie Walton
Executive Director
306 East 12th Street Room 913
Kansas City, MO 64106
816-234-5005

WITCHITA, KANSAS

City Manager's Review Board

Chris Cherches
City Manager
City Hall 13th Floor
455 North Main Street
Wichita, KA 67202
316-268-4351

OMAHA, NEBRASKA

Public Safety Finding Review Board

The Honorable P. J. Morgan
Office of the Mayor
City-County Building
1819 Farnum Street
Omaha, NE 68101
402-444-5000

NEW ORLEANS, LOUISIANA

Office of Municipal Investigation
Peter Munster
Chief Investigator
2400 Canal Street Second Floor
New Orleans, LA 70119
504-826-1600

DALLAS, TEXAS

Dallas Citizens-Police Review Board
Christine Haw
1500 Marilla Drive Room 4D North
Dallas, TX 75201
214-670-3011

George West
Chairperson
133 North Industrial
Eleventh Floor
Dallas, TX 75207

HOUSTON, TEXAS

Citizen Review Committee
Captain Richard Williams
Houston Police Department
Internal Affairs Division
1415 North Loop West Suite 500
Houston, TX 77008-1655
713-880-6000

There are three committees,
each with seven civilian
members and a chairperson
selected from among them.

ALBUQUERQUE, NEW MEXICO

Independent Counsel
Patrick Apodaca
Kelleher & McCloud
P. O. Drawer AA
Albuquerque, NM 87103
505-884-8282

USA ROSTER

PAGE 8

PHOENIX, ARIZONA

Disciplinary Review Board
Kay Williams
Phoenix Police Department
620 West Washington Street
Phoenix, AZ 85003
602-262-6924

Use of Force Review Board
Kay Williams
Phoenix Police Department
620 West Washington Street
Phoenix, AZ 85003

SAN DIEGO, CALIFORNIA

Citizen Review Board
Arthur Duncan
Assistant to the City Manager
202 C Street
San Diego, CA 92101
619-236-5933

Arthur Ellis
Chairperson
202 C Street
San Diego, CA 92101

SAN DIEGO COUNTY, CALIFORNIA

Citizens Law Enforcement Review Board
Marilyn Lassman
Chairperson
1520 State Street
San Diego, CA 92101
(Office will open February 1992)

LOS ANGELES, CALIFORNIA

Los Angeles Police Commission
Nicole Lupo
Secretary
150 North Los Angeles Street
Los Angeles, CA 90012
213-485-3531

Stanley Sheinbaum
Chairperson
150 North Los Angeles Street
Los Angeles, CA 90012

FRESNO, CALIFORNIA

Ombudsman's Office
David Bearheart
Ombudsman
2310 Purlai Street Suite 200
Fresno, CA 93721
209-488-1000

LONG BEACH, CALIFORNIA

Citizen Police Complaint Commission
Joseph T. Rozan
Deputy City Manager/Director
100 West Broadway Suite 360
Long Beach, CA 90802
213-590-6891

Dr. William Ridgeway
Chairperson
100 West Broadway Suite 360
Long Beach, CA 90802

SAN FRANCISCO, CALIFORNIA

Office of Citizens' Complaints
Eileen Luna
Acting Executive Director
555 Seventh Avenue Room 252
San Francisco, CA 94103
415-553-1407

RICHMOND, CALIFORNIA

Richmond Police Commission
Donald Casimere
Investigative Officer
2600 Barrett Avenue
Richmond, CA 94804
415-620-6532

BERKELEY, CALIFORNIA

Police Review Commission
Robert Bailey
Senior Complaint Investigator
2121 McKinley Avenue
Berkeley, CA 94704
415-644-6716

OAKLAND, CALIFORNIA

Citizens' Complaint Board
Larry Carroll
Senior Complaint Investigator
One City Hall Plaza
Oakland, CA 94612
415-273-3159

PORTLAND, OREGON

Police Internal Investigations	
Auditing Committee	
Joan Engert	Richard Paul
Staff Assistant	Chairperson
1220 SW Fifth Street	520 SW Sixth Avenue
202 City Hall	Room 709
Portland, OR 97204	Portland, OR 97204
503-248-4024	

USA ROSTER

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HONOLULU, HAWAII

Honolulu Police Commission
City & County of Honolulu
John Y. Y. Lee
Executive Officer
1455 South Beretania Street
Honolulu, HI 96814
808-943-3195

Skip Hong
Chairperson
1455 South Beretania Street
Honolulu, HI 96814

PUERTO RICO

Investigation, Prosecution and
Appeal Commission
Guillermo Barboza
P. O. Box 9326
Santurce, Puerto Rico 00908
809-725-3128

ROCHESTER, NEW YORK

Complaint Investigation Committee
The Center for Dispute Settlement
Andrew Thomas
Executive Director
87 North Clinton Avenue
Rochester, NY 14604
716-546-5110

EXHIBIT 8

Police Compliance & Retaliation

Both the San Francisco Charter and SFPD General Order L-1 require San Francisco Police Officers to cooperate with OCC investigations.

The Department has a policy which encourages citizens to bring forward complaints of inadequate police service or official misconduct, and orders officers, when presented with complaints, to receive them with courtesy and without delay. This order also mandates full cooperation of all police department employees with OCC investigations.

In 1988, the Police Commission adopted Resolution 1159-88 which prohibits police officers from threatening, intimidating, misleading, or harassing potential or actual OCC complainants, witnesses, or staff members.

Officers are not allowed to contact complainants or witnesses regarding the issues in a complaint while that complaint is under investigation.

Your Complaint Makes a Difference

We are aware that you feel strongly about your encounter with a police officer, or you would not have taken the trouble to register a complaint, but without adequate evidence, we cannot prove all complaints.

Your complaint goes into the officer's complaint file where it starts, even if it cannot be proven.

In the event this behavior is repeated, the department can take corrective action to help the officer alter the offending behavior.

A Note to Complainants and Witnesses

Many people are frightened at the prospect of filing a complaint against a police officer. The OCC and the Police Commission are of one mind in preventing harassment of and retaliation to victims and reporters of police misconduct. Any allegations of retaliation, action by police officers should be brought to the attention of the OCC immediately.

Police District Stations

HEADQUARTERS 1 Jones Street	NORTHERN STATION 1125 Fillmore Street
CENTRAL STATION 776 Vallejo Street	PARK STATION Sainan & Waller
SOUTHERN STATION 850 Bryant Street	RICHMOND STATION 461 Sixth Avenue
POTRERO STATION 2300 Third Street	INGLESIDE STATION 1 John V. Young Ln
MISSION STATION 1240 Valencia Street	TARAVAY STATION 2345-24th Avenue

Office of Citizen Complaints
555-7th Street, Room 252
San Francisco, CA 94103
415-553-1407

Office Hours
8:00 a.m. to 5:00 p.m.
Monday through Friday

*Courtesy of the
Bar Association of San Francisco*

THE OFFICE OF CITIZEN COMPLAINTS



**SAN FRANCISCO
POLICE COMMISSION**

Who We Are

The Office of Citizen Complaints was created by a voter-initiated amendment to the San Francisco City Charter (Section 3.530.2) and placed under the direct supervision of the Police Commission in 1983. Its purpose is to investigate complaints against San Francisco police officers. It is staffed by civilians who have never been police officers in San Francisco.

What is a Complaint?

While there are a number of categories into which a complaint may fit, essentially a complaint may be classified into one of two categories:

- On-duty police conduct which violates federal, state or local laws, or which violates San Francisco Police Department policies or procedures. Examples include unnecessary force, unwarranted actions such as improper stops, searches or arrests, racial or sexual slurs, and discourses.
- Police conduct which is required by department regulation, but is not performed by the officer. An example of this would be neglect of duty, which is a failure to perform a required duty.

Anonymous Complaints

The Office of Citizen Complaints does receive anonymous complaints. Anonymous complaints will be treated with the same importance as any other complaint, however, the Police Commission has determined that anonymous complaints cannot be sustained without additional evidence.

Investigative Hearing Process

Investigative Hearings are held following the conclusion of an OCC investigation at the request of the complainant or of the officer or when, in the opinion of the Director, a hearing would facilitate the fact-finding process. Hearings have been structured to be as non-adversarial as possible. The legal, technical rules of evidence do not apply; there is no direct or cross examination of witnesses unless all parties agree otherwise.

The hearing is not a court of law or a substitute for a court. The Investigative Hearing Officer, who is not a member of our staff, and who has had no previous contact with your case, will decide only the facts of your case. The facts are then applied to departmental rules and procedures, by the Director, who will decide whether to sustain the allegations contained in your complaint.

Preparing for a Hearing

When the OCC has completed an investigation of your complaint, and the Director approves the recommendations of the investigator, a letter will be mailed to you which will indicate our findings. Should you so desire, you may make an appointment to review the investigator's report in the OCC office. You may make notes, but confidentiality requirements of state law prohibit the making of a copy.

You will have ten (10) days within which to decide whether you want a hearing, and to submit your request to the Director. The Director will review your request and notify you by mail whether your request has been granted. If it has, you will also be advised of the date and time of the hearing.

The Investigation Process

The complaint will be investigated by a trained investigator. The investigation may include interviews of witnesses and officers; a review of police department records, policies and procedures, inspection of medical records and photographs, and legal analysis. Once the complaint has been completed it will be reviewed by a team of supervisors to ensure accuracy and consistency with Police Commission standards.

Preliminary disposition letters will be sent to both the complainant and the officer(s). The complainant and officers have the right to make an appointment with the investigator to review the procedures followed in the investigation. In the event that the complaint is sustained, it will be forwarded to the Chief of Police for further action after a ten day waiting period.



The Chief may hold a disciplinary hearing in which he may impose up to a ten day suspension. If the nature of the allegation requires more serious discipline, or if the officer has had previous instances of the same misconduct, the Chief may send the complaint forward to the Police Commission which will hold a formal administrative hearing. Under an OCC verified complaint procedure, the OCC Director can elect to forward a complaint to the Police Commission even if the Chief does not.

Should you have to testify before the Police Commission, you are not required to have a lawyer. The OCC or the Police Department will prosecute the case for the Chief. That prosecutor will ensure that your rights are protected.

How to Make a Complaint

The most effective way to file a complaint is to come into the OCC office. This will allow investigators to personally interview you and to do a thorough job of completing the initial, and one of the most important, phases of the investigation of a complaint. Other ways a complaint may be filed are:

- **Complete and return the complaint form by mail.** Forms are available by calling the OCC and requesting that one be sent to you. They are also available at all nine district police stations, and from various community groups. Once completed, the complaint form may be folded and dropped in any mailbox. The postage is pre-paid.
- **Send us a letter detailing the incident.** Please be sure to include your address and your daytime and evening telephone numbers so we may contact you for additional information, if necessary.
- **Go to a district police station.** All district stations are open 24 hours a day. All police personnel are required to receive complaints courteously and to assist you with filing them.
- **Call the OCC.** Complaints may also be filed over the telephone.

Finally, if you are injured, it is vitally important that you file your complaint as soon as possible so that photographs can be taken and medical records obtained quickly. When you file your complaint, you should receive a copy of it regardless of how it is filed.

At The Hearing

It is important that you attend the hearing, even if you did not request it. Your absence may cause evidence not to be considered which could alter the outcome.

If you need an interpreter, one can be provided for you at no charge if you advise the Hearing Coordinator as soon as possible before your hearing date.

Both complainants and officers have the right to have a representative present during all parts of the hearing. Representatives are not mandatory, but you are encouraged to bring one. Your representative may be a friend, family member, an attorney or anyone else who is not a witness in your case.



Should you want a representative, you must get your own. The OCC will not represent you, or present any evidence at the hearing.

Important Considerations

Please include the following information in your description of the event:

- The day, date, time and exact location of the incident.
- The officer's name, badge number, and physical description.
- Witnesses' names, addresses and telephone numbers, and the license numbers for any vehicles involved in the incident.
- Any other evidence you feel may be important like copies of citations, photographs, and medical records. If you have injuries include their nature and extent.

Charter of the City and County of San Francisco

Section 3.530-2 Office of Citizen Complaints. The Police Commission shall have the power and duty to appoint a director of the office of citizen complaints who shall hold office at its pleasure. The appointment shall be exempt from civil service requirements of this charter. The director shall never have been a uniformed member or employee of the department. The director of the office of citizen complaints shall be the appointing officer under the civil service provisions of this charter for the appointment, removal or discipline of employees of the office of citizen complaints.

The police commission shall have the power and duty to organize, reorganize, and manage the office of citizen complaints. Subject to the civil service provisions of this charter, the office of citizen complaints shall include investigators and hearing officers. No full-time or part-time employee of the office of citizen complaints shall have previously served as a uniformed member of the department. Subject to rule of the police commission, the director of the office of citizen complaints may appoint part-time hearing officers who shall be exempt from the civil service requirements of this charter. Compensation of said hearing officers shall be at rates recommended by the police commission and established by the board of supervisors or contract approved by the board of supervisors.

Complaints of police misconduct or allegations that a member of the police department has not properly performed a duty shall be promptly, fairly, and impartially investigated by staff of the office of citizen complaints. The office of citizen complaints shall investigate all complaints of police misconduct or that a member of the police department has not properly performed a duty, except those complaints which on their face clearly indicate that the acts complained of were proper and those complaints lodged by other members of the police department. The office of citizen complaints shall recommend disciplinary action to the chief of police on those complaints that are sustained. The director of the office of citizen complaints shall schedule hearings before hearing officers when such is requested by the complainant or member of the department and, in accordance with rules of the commission, such a hearing will facilitate the fact finding process.

Nothing herein shall prohibit the chief of police or a commanding officer from investigating the conduct of a member of the department under his or her command, or taking disciplinary or corrective action, otherwise permitted by this charter, when such is warranted; and nothing herein shall limit or otherwise restrict the disciplinary powers vested in the chief of police and the police commission by other provisions of this charter.

The office of citizen complaints shall prepare in accordance with rules of the police commission monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the department which could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while insuring effective police service.

In carrying out its objectives the office of citizen complaints shall receive prompt and full cooperation and assistance from all departments, officers, and employees of the city and county. The director of the office of citizen complaints may also suggest and the chief of police shall require the testimony or attendance of any member of the police department to carry out the responsibilities of the office of citizen complaints.

~~The annual appropriations for all costs of the office of citizen complaints shall not exceed sixty percent of the costs incurred by the police department internal affairs bureau for the fiscal year ending June 30, 1981, adjusted annually thereafter for inflation. Repealed in 1987~~

**OFFICE OF CITIZEN COMPLAINTS****~CITIZEN COMPLAINT FORM~****INSTRUCTIONS FOR COMPLETION OF THE CITIZEN COMPLAINT FORM:**

Please answer questions in blocks 2, 3, 4, 5, 6, 8, 9, 10, 11, 15, 17, 20, 21, & 22. Leave all other blocks blank unless you know the information requested. Please print all information in English. If you do not have a telephone number, enter a message number or the number of a neighbor, friend or relative in block 4. If witnesses are available, write their names, addresses and telephone numbers on a separate sheet of paper and attach it to your complaint. Do not write them on the complaint form. If you do not know the officers name or badge number, include a complete physical description in the narrative (22). Print your narrative. Explain what happened from beginning to end. Be specific as to the nature of your complaint against each officer. Include who, what, where, when and why. If you need additional space, use separate sheets of paper and attach them to the complaint. **YOUR STATEMENT MUST BE A TRUE AND ACCURATE ACCOUNT OF THE INCIDENT** to the best of your knowledge and belief, and must be signed by you in block 25. If you have questions or need help, please call the OCC at 415-553-1407 between 8:00 a.m. and 5:00 p.m., or leave a message with our answering service after 5:00 p.m. You may also contact your local neighborhood center for help. Interpreters can be provided at no charge.

填寫公民投訴書說明：

請回答第 2、3、4、5、6、8、9、10、11、15、17、20、21 及 22 項問題。除非您知道我們所要求的資料，否則請將其他各項留空。所有資料，務請以正楷填寫清楚。如果您沒有電話號碼，請在第 4 項填上有可能聯絡您的電話號碼，或鄰居、親戚、朋友的號碼。如果有證人，請用另一張紙寫上他們的姓名、地址及電話，和投訴書夾在一起；切勿寫在投訴書上。如果你不知道涉及事件的警務人員姓名或編號，請將該員的身體特徵，以正楷詳盡寫在第 22 項上。請清楚說明事件的過程，及投訴的類別，包括涉及何人、何事、何處、何時及何由。如您認為投訴書不夠您填寫，可以另紙填寫資料，夾在投訴書上。您應根據您所知道及所相信的事實填寫資料，必須真實及正確；填妥請在第 26 項簽名。如有疑問或需要幫助，請在上午八時至下午五時，致電 415-553-1407「公民投訴組」，或在下午五時後，在該組的電話錄音機上留言。您亦可以與有免費翻譯員服務的「華埠建民中心」求助，電話 415-391-5099。

INSTRUCCIONES PARA LLENAR EL FORMULARIO DE QUEJAS DE LOS CIUDADANOS: Por favor conteste las preguntas de las casillas 2, 3, 4, 5, 6, 8, 9, 10, 11, 15, 17, 20, 21, & 22. Deje sin contestar las demas preguntas a menos que sepa la información solicitada. El formulario debe ser contestado en Ingles. Si usted no tiene telefono escriba en la casilla 4 el número de un servicio de mensajes, o el de un vecino, amigo o pariente. Escriba en una hoja separada los nombres, direcciones y telefonos de los testigos (si los hay), y adjunte ésta información al formulario. En caso de que no conozca el nombre o número de insignia de los oficiales, incluya una descripción fisica completa (22). Describa los hechos en forma completa, sea especifico. Incluya quien, que, donde, cuando y porque. Su declaración debe ser un recuento exacto y verdadero del incidente y debe estar firmada por usted (25). Para pedir información o solicitar ayuda visite nuestras oficinas locales o llamenos al numero 415-553-1407, de 8:00 AM - 5:00 PM. El servicio de interpretacion es gratis. Formularios tambien pueden ser obtenidos en La Raza Information Center-415-826-5885.

PARAAN NE PAGSASGOT SA PORMANG ITO (CITIZEN COMPLAINT o REKLAMO NE MAMAMAYAN)
Mangyaring sagutin ang mga tanong sa blokeng 2, 3, 4, 5, 6, 8, 9, 10, 11, 15, 17, 20, 21, at 22. Kung wala kayo ng impormasyon hinihingi dito, paki-iwanan blanko ang blokeng hindi masagot. Paki-ilmbag ang lahat na sagot ninyo. Kung wala kayong telepono, paki-sulat lang ang inyong "message number", o ang numero ng inyong kapit-bahay, kaibigan, o kamaganak. Kung mayroon kayong mga saksi o testigo, isulat sa ibang papel ang kanilang mga pangalan, mga tirahan, at mga telepono at ikabit ito sa reklamo ninyo. Huwag gagamitin ang pormang ito. Kung hindi ninyo alam ang pangalan ng pulis o ang numero ng kanyang tsapa, isama sa inyong salaysay ang hitsura at pagmumukha ng pulis. Ilmbag ang inyong salaysay. Liwanagin lahat ang nangyari magmula sa umpisa hanggang sa katapusan. Tiyakin o siguraduhin ang inyong sinusumbong o renireklamo. Sabihin o ilarawan kung sino, ano, saan, kailan at bakit sa pangyayari. Kung kulang ang pagsusulat dito gumamit ng ibang papel at ikabit ito sa sumbong ninyo. Sa inyong kaalaman at paniniwala, ang inilahad ninyong nangyari ay dapat lubos na katotohanan at walang kamali-mali at kailangan ninyong pirmahan ang sumbong ito sa blokeng bilang 25. Itanong sa amin kung alinman dito ang hindi maliwanag sa inyo. Kung kailangan ninyo ng tulong, paki-tawagan kami, OCC, telepono 415-553-1407. Maaring tawagan din ninyo ang Dimasalang House sa telepono 415-495-5007 sa pagitan ng alas-otso ng umaga at alas-singko ng hapon o mag-iwan ng pahatid o "message" sa aming "answering service" paglampas dng alas-singko ng hapon.

OFFICE OF CITIZEN COMPLAINTS - USE BLACK INK ONLY!

1 Day, Date & Time Complaint Received

--	--	--	--	--	--	--	--

Complaint Against: Personnel ☐ Policy ☐ Procedure ☐

How Received: Person ☐ Phone ☐ Letter ☐ SFPD ☐ Mail-In ☐ Other ☐ : (specify) _____

2 Primary Complainant:

Last Name	First Name	Middle Initial
-----------	------------	----------------

HOME ADDRESS: _____
 Street Apartment

City _____ State _____ Zip _____

WORK ADDRESS: _____
Street Apartment

City _____ State _____ Zip _____

3 Personal Information

Age: _____ Date of Birth: _____

Sex: _____

Ethnicity: _____

Occupation: _____

④ Telephone Numbers:

Home: () _____

Work: () _____

5 Location of Occurrence:

6 Type of Place

District

Day, Date, & Time Of Occurrence:

A.M. / P.M.
(Circle one)

9 Incident Report or Citation No

10 SECONDARY COMPLAINANT? Yes ☐ No ☐ Witnesses? Yes ☐ No ☐ (If "Yes", attach separate sheet of paper.)
Taped interview? Yes ☐ No ☐ Criminal Case Pending in Relation to this matter? Yes ☐ No ☐

11 Injuries Claimed? Yes ☐ No ☐ Injuries Visible? Yes ☐ No ☐ Drug/Alcohol Related? Yes ☐ No ☐
Photos Taken? Yes ☐ No ☐ By: Photo Lab ☐ O.C.C. ☐ Other: _____

Type of injury:

Medical Release Signed? Yes ☐ No ☐

[illegible]

22

NARRATIVE OF INCIDENT:

23

CASE DISPOSITION AND COMMENTS:
(For O.C.C. use only!)

24

ASSIGNED TO:

DATE:

25

I verify that the above statement is true and
correct to the best of my knowledge and belief.

X

Complainant's Signature

Taken By:

Name

Title/Star #

Station

After you have completed this form, return it to the Office of Citizen Complaints by folding it along the lines below so that the address shows on the outside. Drop in any mailbox. NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES.

在您填妥本投訴書後，請沿摺線摺妥（地址在外），投入郵箱，寄回「公民投訴組」。在美國境內寄出，不需郵費。

Despues de completar la forma, doblela sobre las lineas marcadas y depositela en el buzón. No necesita estampilla (sello postal).

Matapos buuin ang pormang ito, tiklupin sa mga linyang nakatatak sa baba upang makita sa labas ang aming "address". Ihulog sa anumang buson o "mailbox". Hindi kailangan ng selyo kung ipadadala lang sa loob ng America.

OFFICES LOCATED AT:
555-7th Street, Room 252
(Between Bryant and Brannan Streets)
San Francisco, California 94103



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST CLASS MAIL PERMIT NO. 22978 SAN FRANCISCO, CA

POSTAGE WILL BE PAID BY ADDRESSEE

City and County of San Francisco
OFFICE OF CITIZEN COMPLAINTS
400 Van Ness Avenue, Room 67-A
San Francisco, California 94102-9946



EXHIBIT 9

10. What if I have a complaint regarding police conduct or policies of other police departments?

The Commission handles complaints regarding the Berkeley Police Department only. If your complaint involves some other department, contact that department's Internal Affairs Bureau or the office of the chief manager or administrator for the relevant jurisdiction.

**WHERE CAN I GET
MORE INFORMATION?**



Call (415) 644-6716

Or

come in to our office

**2121 McKinley Ave.
Berkeley 94703**

We're here to help.



**The City of Berkeley
POLICE REVIEW
COMMISSION**



How it works for you

The Berkeley Police Review Commission (PRC) is the oldest civilian review board in the country. Formed by Berkeley voters in 1973, it is totally independent of the Berkeley Police Department. It is both a national and international model for civilian review.

The goal of the PRC is to provide a means for you, the citizen, to bring complaints you may have about Berkeley police conduct before a board of Berkeley residents. The nine PRC members all live in the city and are appointed by the Mayor and members of the City Council. None can be employees of the Police Department nor be city employees.

The PRC also serves as a go-between for the police department and neighborhoods, helping both to improve police services and prevent crimes. We can help you organize your neighborhood, learn about crime prevention and work with the Berkeley Police Department to make our city a safer, better place to live.

The Police Review Commission is not only a community watchdog, but also seeks to bring police and citizens together to deal with community problems and prevent misunderstandings.

This pamphlet explains how to file a complaint with the Commission and how we conduct investigations. It also tells you how the Commission arrives at its decisions. Over 1000 people have used the Commission process. We know that it has improved police-community relations and helped to build one of the finest police departments in the state.

The PRC and its Staff hope that you will use the Commission process if you have a problem.

Sincerely,

The Members and Staff of the
Police Review Commission,
City of Berkeley

Complaints may be made by an Aggrieved Person, or his/her parent, guardian or relative. An Aggrieved Person is defined as "Any person directly affected by the alleged police misconduct, policy or practice."

If there is no Aggrieved Person able to make a complaint, or in any case involving the death of a person, the Commission can initiate an investigation on its own. In that case the Commission may designate a person to act as complainant.

1. How do I make a complaint?

You may make your complaint to our office at 2121 McKinley Avenue, Berkeley, CA 94704, telephone number 644-6716. If you are unable to come into our office between the hours of 8:00 a.m. and 5:00 p.m. you may call and a convenient time will be arranged. Interviews can also be conducted at your home if necessary.

All complaints must be in writing and signed (under penalty of perjury). If you are unable to write your complaint, you may tell your complaint to an investigator, who will write it down for you.

2. How long do I have to make a complaint regarding the incident?

You must file within 30 calendar days after the incident you're complaining about. The Commission may extend this deadline an additional 30 days but only if the failure to file within 30 days was caused by exceptional circumstances.

3. What happens after I make a complaint?

The Commission Investigator will notify you, the Chief of Police and each officer who is a subject of the complaint within ten (10) working days that a complaint has been filed, the specific charges and that the matter is under investigation. At that point the Internal Affairs Bureau of the Berkeley Police Department also begins an investigation.

4. What happens after you file your complaint?

The Investigator interviews you, the officer named in the complaint, and any witnesses or other persons who might have relevant information. Interviews are tape recorded, whenever possible, and transcribed or summarized. The person interviewed is usually asked to sign a written summary of the interview. Police reports and other relevant information and records are obtained.

The Investigator will complete the investigative report within 75 days after the complaint is made and all parties will immediately be notified. A copy of the investigative report is sent to you and to each subject officer. A date, time and place is set for a hearing before a Board of Inquiry composed of three Commissioners.

5. What happens at the Board of Inquiry hearing?

After a Board of Inquiry is named all parties are notified. Any party may file a written challenge against any Commissioner who he/she feels cannot judge the case fairly. The reasons for this challenge for Conflict of Interest or Bias must be specific.

Hearings consist of testimony, under oath, by the complainant, the subject officer, and/or civilian witnesses and the Police Departmental Representative. The complainant and any subject officer may be represented by an attorney, or other representative, or may choose to speak for themselves. The hearings are not run according to formal court procedures. They are informal citizen hearings and thus it is not necessary to be represented. All hearings are open to the public, unless closed by a vote of the entire commission due to unusual circumstances.

The Board shall make one of the following findings on each of the charges:

"Sustained" the Board finds the charges true and the Police action was not justified.

"Not Sustained" the Board does not find the charges to have been sufficiently proved.

"Action Justified" the Board finds that the alleged act did occur but was lawful, justified and proper.

"Unfounded" the Board finds the charges not true.

The decision will be announced at the hearing. Written findings will later be sent to the City Manager and to each party and the complainant following the hearing.

Where the complaint concerns a general policy or practice of the Police Department, Board recommendations are presented to the full commission for discussion before being sent to the Chief of Police, City Manager, the Mayor and City Council.

6. Can findings of the Board of Inquiry be appealed?

Yes, any party to a complaint may ask the full Commission for a hearing but this must be done within 15 calendar days of the mailing of Board findings. Rehearing will be granted only if, 1) there is newly discovered evidence, not available at the hearing, 2) a "substantial" mistake in the way the hearing was conducted.

Petitions will be granted or denied within 21 days, and if granted, the rehearing will be held within 35 days after that.

7. What happens as a result of the hearing?

The PRC does not recommend discipline. The City Manager reviews the findings of the PRC and the Internal Affairs Bureau. He makes decisions about discipline of the subject officer. The City Manager, in consultation with the Chief of Police can also order changes in departmental policy.

8. What discipline may be imposed on an officer if my complaint is sustained?

The penalty varies, depending on the officers' misconduct. The maximum penalty that can be imposed by the City Manager is dismissal from the Berkeley Police Department. Disciplinary action taken is never disclosed.

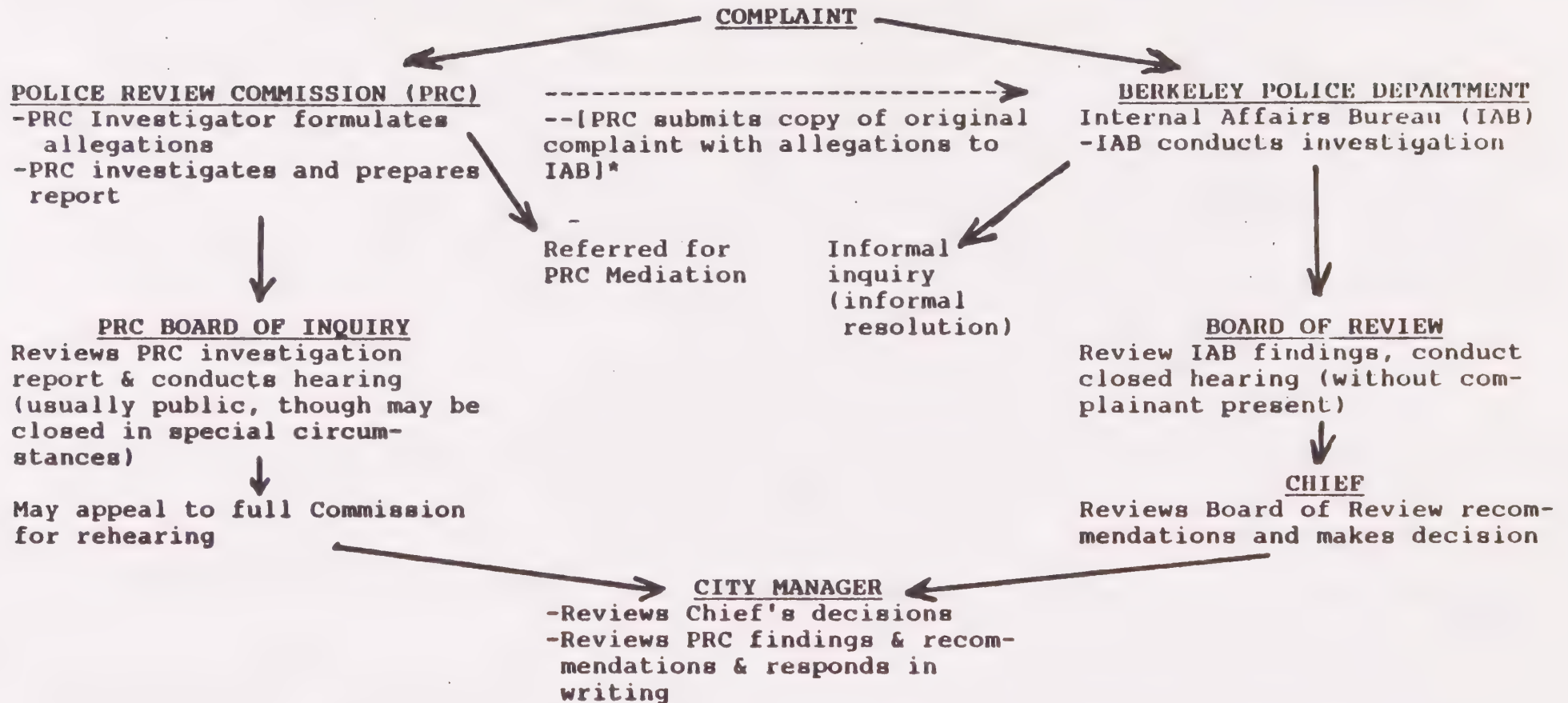
9. What if I want to charge a police officer with a criminal offense or sue the officer in the Civil Courts?

Your right to take either of these alternatives is not changed by the Commission's complaint procedure.

You may seek to charge an officer with a criminal offense by contacting the Berkeley District Attorney, 2120 Martin Luther King Jr. Way, 644-6683.

If you want to bring a civil suit, you should contact an attorney. A statement of claim against the city must be filed with the City Attorney's office within six months of the incident.

**CITY OF BERKELEY
POLICE COMPLAINTS
FLOWCHART**



***Note:** The PRC and IAB processes operate in parallel but are completely independent of one another. The purpose of PRC notice of receipt of complaint to IAB is to both notify BPD officers of allegations against them and to provide an opportunity for BPD/IAB to investigate matter internally, independent of PRC process. Accordingly, upon receipt of complaint from PRC, IAB investigator will try to initiate direct contact with complainant to see if individual wishes to pursue matter through IAB process as well. The complainant is NOT obligated to enjoin the IAB process, however, if he/she chooses not to. (It is also important to note that the PRC only investigates, and gets notice of, complaints filed directly with the PRC.)

**BERKELEY POLICE DEPARTMENT
POLICE REVIEW COMMISSION
(9 Member Civilian Board Appointed by City Council Members and Mayor)**

Power

1. Conduct investigations independent of BPD
2. Hold public hearings
3. Compel BPD police officers to submit to PRC interviews and to testify at PRC hearings as a condition of employment per City Manager policy
4. Render findings and make recommendations directly to City Manager or City Council
5. Disclose reports and findings publicly

Jurisdiction

Over allegations of misconduct by BPD personnel and BPD policy, practices, and procedures

PRC Complaint

Written and signed by complainant
Notice of complaint given by PRC to BPD Chief of Police and Internal Affairs Bureau to initiate separate and independent investigation

Complaint Disposition Procedure

A. Filing Periods

1. 90 calendar days from alleged BPD misconduct
2. Exceptions: At least 6 Commissioners vote that complainant shows by clear and convincing evidence that noncompliance is result of inadvertence, mistake, surprise, or excusable neglect, if so, 90 day extension possible

B. Investigation (unless dispute mediated [see below])

1. PRC Investigator determines whether a sufficient factual basis has been stated for raising misconduct allegation subject to review by full Commission; notice of specific allegations sent to subject officer(s) or PRC Investigator determines case appropriate for mediation
2. PRC Investigator interviews all parties and witnesses
3. Collecting all relevant BPD reports and regulations, statutes, and other documentary evidence

C. Investigative Reports

1. Circulates to all parties within 75 calendar days after complaint filed to all parties
2. Supplemental reports must circulate 48 hours prior to hearing

D. Types of Disposition

Mediation

All cases are eligible except those involving death caused by BPD.

VOLUNTARY PROCESS

Involving complainant, PRC Commissioners, BPD and subject officer - all must agree.

TIME FRAME

PRC Investigator notifies BPD within 10 days of complainant's mediation choice. BPD has 10 days to agree/disagree and to notify officer; officer has 10 days from BPD notice to agree to mediate.

MEDIATION SELECTION

The officer and the complainant have a role in mediation selection.

MEDIATION SESSION

Complete within 30 days of mediator's selection

APPEAL

Parties may appeal a mediation determination.

BUT

if parties reach an accord, no further action

Board of Inquiry

OPEN PUBLIC HEARING
Held within 105 days of receipt of complaint

MECHANICS

Parties: 3 Commissioners, one serving as Chairperson, BPD officer(s) and Departmental Representative, complainant, PRC Investigator and counsel, if desired. Process: Each party testifies under oath and each party may be questioned by Board and by the parties or their attorneys. Board deliberates in closed session absent majority vote to publicly deliberate.

EVIDENCE

All relevant evidence is admissible including hearsay evidence to supplement or explain other admissible relevant evidence; notice of any evidence to be given must be given to all parties at least 48 hours prior to hearing.

CATEGORIES OF FINDINGS

Unfounded; not sustained; exonerated; sustained.

REPORT OF FINDINGS AND NOTIFICATION

1. Within 30 days of hearing Board submits written findings to PRC secretary.
2. Each party noticed of right to petition for rehearing.
3. Findings are sent to City Manager who reviews Board findings and responds in writing, with notice to Police Department, with explanation if he does not concur with Board findings.

Policy Boards

The PRC has jurisdiction to hear policy complaints against BPD to seek redress as to systemic problems (as opposed to individual complaints against individual officers). Any BPD policy procedure or practice can be reviewed.

Policy Board may be 3 Commissioners or full Commission, at discretion of PRC. Recommendations for policy charges by 3 Commissioner panels require verification by full Commission; all recommendations for PRC then presented to Chief and/or City Manager for response. Commission also has the discretion to make policy recommendations directly to the City Council.

NOTE

PRC holds regular public meetings twice a month. there is always an opportunity for citizens to speak at the beginning of those meetings under Public Comment or any matter of concern regarding BPD.

Those meetings are generally scheduled on the second and fourth Wednesday nights each month at 7:30 p.m., at the South Berkeley and North Berkeley Senior Centers, respectively.

Call office to confirm.

ORDINANCE NO. 4644 -N.S.

ESTABLISHING A POLICE REVIEW COMMISSION

Adopted by

PEOPLE of BERKELEY

April 17, 1973

(referenced for Court decision April 12, 1976)

Amended To: April 15, 1975

Annotated: June 9, 1976

Amended To: December 3, 1982

ORDINANCE NO. 4644 -N.S.

ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION.

The people of the City of Berkeley do ordain as follows:

Section 1. The general purpose of this ordinance is to provide for community participation in setting and reviewing police department policies, practices, and procedures and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department.

Section 2. There is hereby established a Police Review Commission of the City of Berkeley. Said Commission shall consist of nine (9) members. Each Councilmember shall appoint (1) member to the Commission. All members shall be residents of the City of Berkeley. No officer or employee of the City shall be appointed to the Commission.

~~Section 3. The term of each member shall be two (2) years commencing on October 4 of each odd numbered year and ending on October 3 of each succeeding odd numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council. No member shall serve more than two (2) consecutive terms or portions thereof.~~

Section 4. Vacancies on said Commission, from whatever cause, except temporary vacancies as hereinafter provided, shall be filled for the unexpired term by the City Council member whose appointee has ceased to serve. The appointment of any member of the Commission who has been absent and not excused from three (3) consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term. A member of the Commission may be granted a leave of absence not to exceed three (3) months by the City Council, and a temporary vacancy shall thereupon exist for the

period of such leave of absence. During the period of such temporary vacancy, the Council may fill such vacancy by a temporary appointment to said Commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full and permanent membership on said Commission.

Section 5. The Commission shall elect one of its members as Chairperson and one as Vice-Chairperson, who shall each hold office for one (1) year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected no later than the second meeting of the Commission following its appointment.

Section 6. The Police Review Commission shall be a working Commission. In order to compensate Commissioners for their time and work in investigating complaints, reviewing policies and practices, and attending meetings, Commissioners shall receive \$3.00 (three dollars) per hour, but in no case shall compensation for any one Commissioner exceed \$200 (two hundred dollars) per month. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Commission and filed with the office of city clerk.

~~Such clerical and secretarial assistance as are needed by the Commission shall be provided by the office of the city clerk. The Commission is further authorized to secure and define the duties of same, in the manner consistent with existing law, as it may deem necessary or appropriate.~~

Section 7. The Commission shall establish a regular time and place of meeting and shall meet regularly at least once every two weeks or more frequently as workload requires. The regular place of meeting shall be in an appropriate central location in the City capable of accomodating at least 75 people, but shall not be held in the building in which the Police Department is located. At least once every three months, or more frequently if the Commission desires, the Commission may meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people in the various neighborhoods in the City at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Commission, upon personal notice being given to all members or written notice being mailed to each member and received at least thirty-six (36) hours prior to such meetings, unless such notice is waived in writing.

All Commission meetings, and agendas for such meetings shall be publicized in advance by written notice given to newspapers, radio and television stations serving the City at least three (3) days prior to regular meetings, and at the same time as members are notified of special meetings. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the City as are designated by the Commission.

All meetings shall be open to the public, unless the Commission, in order to protect the rights and privacy of individuals, decides otherwise and if such closed meeting is not waived by the individual concerned. The Commission shall cause to be kept a proper record of its proceedings. The records and files of the Commission and its officers shall include, but not be limited to, all official correspondence, or copies thereof, to and from the Commission and its members, gathered in their official capacities, and shall be kept and open for inspection by the public at reasonable times in the office of the Secretary to the Commission.

A majority of the appointed Commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take any action.

The Commission may appoint such subcommittees as are deemed necessary or desirable for the purposes of this ordinance, provided that, membership on such subcommittees shall not be limited to the Commission members but may include members of the public who express an interest in the business of the subcommittees. The members of such subcommittees shall serve without compensation.

Section 8. On the petition of fifty (50) or more citizens in the City of Berkeley filed in the office of the Secretary of the Commission, the Commission shall hold a special meeting in an appropriate and convenient location for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission. In no case shall the Commission meet later than five (5) working days following the date the petition is filed.

Section 9. In carrying out its objectives, the Commission shall receive prompt and full cooperation and assistance from all departments, officers and officials of the City of Berkeley. The Chief of Police, or his deputy if the Chief is ill or absent from the City, shall as part of his duties attend meetings of the Commission when so requested by the Commission, and shall provide such information, documents, or materials as the Commission may request. The Commission may also require the attendance at its meetings of any other police department personnel or City officials it deems appropriate in the carrying out of its responsibilities under this ordinance.

Section 10. The Commission established by this ordinance shall have the following powers and duties:

- a) to advise and make recommendations to the public, the City Council, and the City Manager;
- b) to review and make recommendations concerning all written and unwritten policies, practices and procedures of whatever kind and without limitation, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law

enforcement generally, such review and recommendation to extend to, but not be limited to, the following:

- i) Treatment of rape victims;
- ii) Police relationship with minority communities;
- iii) Use of weapons and equipment;
- iv) Hiring and training;
- v) Priorities for policing and patrolling;
- vi) Budget development;
- vii) Other concerns as specified from time to time by the City Council;

c) to request and receive promptly such written and unwritten information, documents and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this ordinance from any office or officer or department of the city government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each and all of which are hereby directed as part of their duties to cooperate with and assist the Commission in the carrying out of its responsibilities; provided that information the disclosure of which would impair the right of privacy of specific individuals or prejudice/pending litigation concerning them shall not be required to be made available to the Commission/except in general form to the extent police activities in specific cases reflect police department/policies and; provided that, the individual involved in the specific situation may consent in writing to the disclosure of information concerning him or her, in which case it shall be made available to the Commission;

d) to receive complaints directed against the Police Department and any of its officers and employees, and fully and completely investigate said complaints and make such recommendations and give such advice ~~without limitation~~ (including/disciplinary action and action relating to departmental policies and procedures) to the City Council and the City Manager in connection therewith as the Commission in its discretion deems advisable; provided as follows:

- i) that investigation of all complaints filed with the Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible;
- ii) that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred to the Commission for investigation and that the Police Department shall conduct its own investigation only at the request of said Commission, and;
- iii) that regular quarterly reports relating to the number, kind, and status of all such complaints shall be made by the Commission to the City Council and the City Manager;

e) consistent with provisions of the Berkeley City Charter and to the extent permissible by law, to exercise the power of subpoena;

Note: The language shown in ~~strike out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.

f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this ordinance and its general purposes.

Section 11. That Ordinance No. 4061-N.S. and Ordinances No. 4149-N.S. and No. 4887-N.S. in amendment thereof are each and all repealed by this Bill. To assist in an orderly transition between the Citizens Committee on Public Safety, herein abolished, and the Police Review Commission established by this Bill, all files, records, books, publications, and documents of whatever kind of the former Committee shall be promptly deposited in the Office of the City Manager for the use and benefit of the newly created Police Review Commission.

Section 12. If any provision of this ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the ordinance which can be given effect without the invalid provisions or applications, and to this end any phrase, section, sentence, or word is declared to be severable.

In effect: April 17, 1973

AMENDING SECTION 3 OF INITIATIVE ORDINANCE NO. 4644-N.S. ENTITLED "ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION."

BE IT ORDAINED by the People of the City of Berkeley as follows:

That Section 3 of Initiative Ordinance No. 4644-N.S., as above entitled, is hereby amended to read as follows:

Section 3. The term of each member shall be two (2) years commencing on December 1 of each even numbered year and ending on November 30 of each succeeding even numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council.

This ordinance was approved by the electors of the City of Berkeley at the General Municipal Election held in the City of Berkeley on November 2, 1982.

In effect: December 3, 1982

Index to Text Changes

	<u>Section</u>	<u>Action</u>	<u>Ordinance No.</u>	<u>Eff. Date</u>
	2	Amended	4779-N.S. (Vote of the people)	4-15-75
	3	Amended	4779-N.S. (Vote of the people)	4-15-75
Attached	3	Amended	5503-N.S. (Vote of the people)	12-3-82

Berkeley Police Review Commission

REGULATIONS FOR HANDLING COMPLAINTS AGAINST
MEMBERS OF THE POLICE DEPARTMENT

(Adopted May 13, 1975)

(Amended August 8, 1984)

(Amended April 30, 1990)

PREAMBLE

The following procedures for handling complaints against members of the Berkeley Police Department have been drawn up in accordance with the enabling ordinance establishing the Police Review Commission for the City of Berkeley. That ordinance, No. 4644-N.S., passed by the voters April 17, 1973, provides a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department and these regulations are adopted by the Commission to carry out this purpose

The Ordinance gives the Commission the power to adopt rules and regulations and develop such procedures for its own activities and investigations. The intent of the Ordinance reflected in these procedures, is to give citizens the means to have complaints against the Berkeley Police Department and its employees investigated, heard and resolved. The Ordinance, by setting up this commission made up of residents of this community, intended to establish a process available to any citizen, free of charge, and without the need for attorneys or other professional advisors.

The Commission is not a court of law and does not conduct its business according to the strict rules of evidence. Consistent with the powers granted to it by the enabling Ordinance, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley.

I. GENERAL

1. Application of Regulation. The following regulations shall be employed by the Berkeley Police Review Commission to govern the receipt and processing of complaints. The Commission shall receive and process complaints in accordance with these regulations, and shall advise and make recommendations concerning its findings directly to the Chief of Police, the City Manager and the City Council, and the public.

2. Definitions. The following definitions shall apply in these regulations:

- a. Complaint: An allegation of misconduct against a member of the Berkeley Police Department (including employees of the Public Safety Communications Center, while engaged in police functions or of an improper policy or practice of the Berkeley Police Department.
- b. Aggrieved Person: Any person directly affected by the alleged policy misconduct, policy, or practice as defined above.
- c. Complainant: The Aggrieved Person filing the complaint.
- d. BPD Member: A sworn officer or other employee of the Berkeley Police Department (see Complaint definition).
- e. Subject Officer: A BPD member against whom a complaint is filed.
- f. Commission or PRC: The Berkeley Police Review Commission.
- g. Departmental Representative: That BPD member designated by the Chief to appear at a Board of Inquiry or before the Commission to speak on behalf of the Berkeley Police Department.
- h. BPD Member Witness: A BPD member, not a subject officer, who has personal knowledge of events concerning a complaint, and whose presence is reasonably required by a Board of Inquiry.
- i. Investigator: A staff investigator employed by the Office of the City Manager and assigned to the PRC.
- j. Board of Inquiry: A Board impaneled by the PRC to hear complaints.

II. PROCESSING COMPLAINTS

1. Initiation of Complaints

- a. Complaints may be made by an aggrieved person. No complaint will be deemed filed with the Commission until it has been reduced to writing and signed by the Complainant. Complaint forms will conclude with the following words: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my verbal testimony before the Board of Inquiry shall be given under oath."
- b. All complaints shall be filed within ninety (90) calendar days of the alleged misconduct, and any complaint not filed within ninety (90) calendar days shall be dismissed; provided, however, that a complaint may be filed within an additional ninety (90) calendar days if at least six Commissioners vote that the complainant has demonstrated by clear and convincing evidence that failure to file the complaint within the initial ninety (90) calendar day statutory period was the result of inadvertence, mistake, surprise or excusable neglect; provided, however, that the running of such ninety (90) calendar day period shall be tolled when a Complainant is incapacitated or otherwise prevented from filing such complaint. Lack of knowledge of the existence of the Commission or its complaint procedures shall not constitute mistake, inadvertence, surprise or excusable neglect in any case.

The findings of the Commission in cases which have been filed during the extension period will not be considered by the City Manager or Police Chief in any disciplinary actions.

Subject Officer testimony is not mandatory in hearings of cases which are filed during the ninety (90) day extension period.

- c. Complaints must allege facts which, if true, would establish that misconduct occurred. Complaints which do not allege such misconduct shall be referred by the Investigator to the Commission for summary dismissal.
- d. If there is no aggrieved person able to initiate a complaint, or in any case involving the death of a person, the Commission may, at any time, with five affirmative votes, authorize an investigation or such other action as it deems appropriate. If such an investigation results in a Board of Inquiry, the Commission may designate any person to act in the role of complainant.

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2. Recording of Complaints and Informing Interested Parties

- a. The Commission shall maintain a central register of all complaints filed. Within twenty working days after the filing of a complaint, the Investigator shall notify the Complainant, the Chief of Police, and each identified Subject Officer that a complaint has been filed, the allegations of the Complaint, and that the matter is under investigation. Delivery to the Police Department shall constitute notice for BPD members. In the event that notice is not given within the time limit set forth above, the Complaint shall be dismissed unless good cause is shown as determined by the Commission.
- b. In addition to the notice, the signed Complaint form shall be available for review and copying at the PRC office by each Subject Officer prior to being interviewed by the Investigator. If no interview with the Subject Officer is conducted prior to the issuance of the investigative report, a copy of the signed Complaint form shall be furnished to him/her with the investigative report. There shall be no charge to the parties for a copy of the report and other documents that constitute the investigative package.

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3. Mediation

- a. Definition - Mediation is an informal process, held before one Commissioner and attended by the Complainant and the subject BPD member for the purpose of fully, thoroughly, and frankly discussing the alleged misconduct and attempting to arrive at a mutually agreeable resolution of the complaint. Mediation may be considered in all cases except those involving the death of an individual.

Mediation will be attempted when all of the following parties agree: 1) Complainant, 2) Commission, 3) Police Department, and 4) Subject Officer.

Successful Mediation shall be defined as a process in which the parties have heard, clarified and understood the issues and each other's points of view. This may result in agreement or an agreement to disagree.

- b. Election - The Investigator shall, prior to the filing of a complaint, inform the Complainant of the PRC process, including the possibility of mediation.

If the Complainant elects mediation, the Investigator shall review the allegations, determine if the complaint is appropriate for mediation, and, if so, notify the Police Department. Such review and notification shall occur within ten calendar days.

If referred to the Department, the Department shall have ten calendar days to review the allegations, determine if the complaint is appropriate for mediation, and, if so, notify the Subject Officer.

If referred to the Subject Officer, the Subject Officer shall have ten calendar days from the date of notification to elect mediation. If Subject Officer elects mediation, he/she must agree, as a condition of mediation, to toll the City's 120-day disciplinary deadline for the length of the mediation process, which shall include the appeal process.

- c. Mediator Selection - If all parties agree to mediation, the Investigator will provide the Complainant and the Subject Officer with a list of three possible PRC Commission mediators. The list will be accompanied by appropriate biographical information on each Commissioner. Both the Complainant and the Subject Officer may then, within ten (10) calendar days, select two Commissioners who are acceptable to them. The Investigator shall then appoint a mediator from those selected and within ten calendar days schedule a mediation hearing at a time convenient for all parties.
- d. Mediation Sessions - The mediation sessions should be completed within thirty (30) calendar days of appointment of mediator. However, the mediation may continue as long as the mediator feels that progress is being made towards resolution of differences between the parties.
- e. Successful Mediation - If mediation is successful (as defined in 3.a. above), the mediator will provide written notice (see attached form) to the PRC and the Department within five calendar days of the last mediation session.
- f. Breakdown of Mediation - If both parties attempt mediation in good faith yet are unable to make substantial progress towards resolution, the mediator may terminate the sessions.

Once the mediator makes this decision, both parties will be notified and the Complainant will be advised of his/her right to proceed with the official PRC investigation and hearing of the Complaint.

If the mediator determines that the Subject Officer is acting in bad faith, the mediation may be terminated and the Complainant advised of her/her right to proceed with the official PRC investigation and hearing of the Complaint.

If the mediator determines that the Complainant is acting in bad faith, the mediator may terminate mediation and no further action will be taken on this matter by the Commission, subject to the appeal rights described in Section II.3.g.

- g. Appeal of Mediator's Decision - Either party, within ten calendar days of the termination of the mediation, may petition the full Commission for review of the mediator's decision.

Within thirty (30) calendar days of filing of an appeal, the Commission may, if good cause is determined by a vote of five Commissioners (exclusive of the Commissioner/mediator), grant the petition for review and either reinstitute mediation, dismiss the complaint or order a formal PRC investigation.

If mediation is reinstituted, a new mediator will be selected under the procedures described in Section II.3.c.

- h. Records of mediation will be destroyed one year from the date mediation is elected by the Complainant.

REPORT OF SUCCESSFUL MEDIATION

Complainant _____

Subject Officer _____

Mediator _____

Date of First Mediation Session _____

Date of Last Mediation Session _____

Number of Mediation Sessions _____

The undersigned agree that mediation of this issue has been successful and that no further action is desired.

Signed:

Complainant

Subject Officer

Mediator

Date: _____

4. Investigations/Conduct/Timetables. The Investigator shall interview the Complainant(s) and Subject Officer(s). The Investigator should interview witnesses and other persons likely to have information concerning the Complaint, and shall assemble all other relevant information. The Investigative Report shall be circulated and submitted within 75 calendar days after the filing of the Complaint. In the absence of good cause, failure of the Investigator to complete and submit the report within said period may result in a summary dismissal of the case. Interviews are to be taped when practicable, and such tapes shall be preserved for 100 days or until the City Manager has made the final disposition of the Complaint, whichever is later. Signed summaries of statements prepared by the Investigator shall be mailed to the parties and witnesses, who will have five days to notify the PRC Office if they wish to add to or modify their testimony.

The initial PRC Report of the investigation should include, at a minimum, an interview of the Complainant, Subject Officer and all principal percipient witnesses, together with the Berkeley Police Department and/or City Rule and Regulation which was allegedly violated by the Subject Officer.

- a. Manner of Conducting Investigations. The investigation shall be conducted in a manner designed to produce a minimum of inconvenience and embarrassment to all parties. When possible, BPD members shall not be contacted at home, and others should not be contacted at their place of employment.
- b. Notice of Rights to Persons Involved in Litigation. In the event that litigation relating to the matter of the Complainant is known to be commenced or to be contemplated by or against any party to a Complaint, the Investigator shall suggest that such party consult with an attorney about the advisability or effect of filing a Complaint with the PRC.
- c. Notice of Constitutional Rights. Subject Officer Testimony shall be required, in accordance with the (see Exhibit A) City Manager's policy. While all BPD Members have a right to invoke the Fifth Amendment, BPD employees also have a duty to answer questions before the PRC regarding conduct and observations which arise in the course of their employment and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not in any manner be considered by the Commission in its disposition of a complaint.
- d. Statements of Witnesses. Whenever the Investigator takes a statement from any Complainant, BPD Member, Subject Officer, BPD Member Witness, Witness, or any other person, said statement shall be tape-recorded, whenever practicable, a summary drafted by the

Investigator, and said summary shall, whenever practicable, be signed by the person who gave said statement. The Investigator shall make every reasonable effort to obtain the signature of each person on their statement. Tape recordings of each statement shall be kept and preserved for 100 days or until the case is finally disposed of by the PRC and its decision has been reviewed by the City Manager.

- e. Criminal Proceedings. In the event that criminal proceedings relating to the matter of the Complaint are known to be commenced against the Subject Officer no investigation shall be undertaken beyond the filing, lodging and docketing of the Complaint. The PRC shall undertake no investigation until the criminal matter has been adjudicated, or the authorities have rendered a final decision not to commence any such proceedings. During the pendency of any such contemplated or commenced criminal proceedings, all time limits applicable to the processing of PRC Complaints (with the exception of the initial filing requirements set forth in Paragraph 1(b), supra) shall be tolled.

Whenever a PRC investigation is tolled as provided in paragraph (e), the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:

1. The original communication center tapes relevant to the complaint.
2. All police reports, records and documentation of the evidence.
3. Names, addresses and telephone numbers and statements of all witnesses.

5. Notification to Parties. Immediately after completion of the investigative report, the Investigator shall provide to the Complainant, each Subject Officer, and the Chief of Police the following:
 - a. Written notice that the Complaint will be considered by a Board of Inquiry.
 - b. Any Investigators recommendations dealing solely with summary disposition or procedural matters.
 - c. A copy of the investigative report and summary, including all attachments, transcribed statements and exhibits supplied to the Board of Inquiry.

- d. Written notice that the parties may consult an attorney if desired, and that an attorney may represent him/her at the hearing, but that an attorney will not be required.
- e. In the event the PRC is notified that a Subject Officer is represented by legal counsel, the PRC shall thereafter send, by mail, copies of any requested documents, together with investigation reports, supplemental reports, etc., to the office of the Subject Officer's attorney.

III. BOARDS OF INQUIRY AND HEARINGS

1. No Contest Response. Subject Officer may enter a written response of "no contest" at any time before a hearing.
 - a. A response of "no contest" indicates that the Subject Officer accepts the allegations of the Complaint as substantially true in fact and interpretation. The Subject Officer shall be bound by the terms of the no contest response in any consideration of the Complaint by the City Manager.
 - b. Upon receipt of a "no contest" response, the Investigator shall refer the file and the findings of "no contest" to the City Manager for appropriate action.

2. Waiver of Hearing. The Commission shall have the discretion, with the concurrence of the Accused Officer and the Complainant, to consider any case upon interview statements, obtained from the Complainant and Subject Officer and any other witnesses, without the necessity of a hearing. The initial request to proceed on this basis may be made either by the Complainant or the Subject Officer. The Accused Officer(s) and the Complainant(s) will sign a written waiver form giving up their right to a hearing.

3. Composition. A Board of Inquiry shall consist of three members of the Commission, one of whom shall be selected by the Board as chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of six Commissioners, the Commission shall sit as a Board of the whole, with a minimum of six commissioners.

4. Designation of Boards of Inquiry
 - a. Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the cases to be heard. The Commission will keep a record of the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period.

- b. If any member of a Board of Inquiry becomes unavailable for any reason, he or she shall be replaced by another commissioner. Notice of this substitution shall be made as soon as possible to all parties to the complaint. If a commissioner is substituted within seven calendar days of a Board of Inquiry, both parties will retain the right to challenge said commissioner for cause under Paragraph 5 below. The notice of intent to challenge a substituted commissioner must be made as soon as possible prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the Board. If a board of inquiry agrees to reschedule a hearing due to the unavailability for any reason of the complainant(s) or subject officer(s) or legal counsel for either, the case or cases assigned to each board shall be reassigned to another board of inquiry. Once a hearing of a case has been convened by a Board of Inquiry, the same Board shall consider the case to final disposition.

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5. Challenges of Commissioners

- a. Challenge for Conflict of Interest or Bias. A commissioner who has personal bias or prejudice, or the appearance thereof, in the outcome of a Complaint shall not sit on such Board. Personal interest in the outcome of a Board of Inquiry does not include holding or manifesting any political or social attitude or belief which does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:
- (1) familial relationship or close friendship with parties material to the inquiry;
 - (2) witnessing events material to the inquiry from a non-neutral perspective;
 - (3) being a party to the inquiry;
 - (4) having a financial interest in the outcome of the inquiry;
 - (5) holding a bias against a particular party that is sufficient to impair the commissioner's impartiality.
- b. Procedure. Within seven (7) calendar days after the date on which the Commission furnishes notice of a Board of Inquiry, including the names of the Commissioners constituting that Board, either party to the Complaint may file a written challenge for cause to any Commissioner hearing the complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the

standard set forth in paragraph 5(a) above. When a challenge for cause is filed the Chairperson shall contact the challenged Commissioner as soon as possible, and if the Commissioner agrees that the challenge is for good cause, or otherwise agrees, the Chairperson shall ask another Commissioner to serve. If the challenged Commissioner does not agree that the challenge is for good cause, the Chairperson shall poll the other members of the Board, and if both agree that the challenge is for good cause the Chairperson shall so notify the challenged Commissioner and ask another to serve. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be incorporated in the investigative packet as part of the record of the Complaint.

- c. Replacement of Challenged Commissioners. Any Commissioner removed, or unable to serve for any reason shall be replaced by another Commissioner.

- 6. Commissioner Comment. Commission members shall avoid public comment on pending complaints.

- a. No member of the PRC shall discuss or listen to discussion of the facts or analysis of any matter which is the subject of a Complaint prior to its hearing.
- b. No member of the Commission shall pledge or promise to vote in any particular manner in any pending Complaint.
- c. Failure to comply with this regulation shall be grounds for removing a Commissioner from the Board that bears the complaint.

- 7. Function. The Board of Inquiry shall review the investigative report and the evidence gathered in connection therewith, hear testimony, prepare findings, and shall advise the Chief of Police and the City Manager of its conclusions and recommendations. The Board shall accept court disposition of traffic or parking citations. It shall assume that uncontested citations are justified, and shall make no assumptions regarding the dismissed citations.

8. Continuances

- a. The PRC recognizes the need of all parties to have complaints heard as expeditiously as possible after full investigation has taken place. Therefore, requests for continuances will not be granted in the absence of good cause.
- b. A majority of the board of inquiry has the discretion to grant a continuance. Such requests shall be presented to the PRC as soon as the cause for continuance arises. In considering whether to grant such a continuance the board of inquiry members shall consider the reason offered for the continuance; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; whether previous requests for continuance have been made; and other relevant information.
- c. The board of inquiry shall provide a response to a request for continuance within two (2) days after receipt, if practicable.
- d. A request for continuance made within three (3) days of the hearing date will not be granted unless the moving party can demonstrate grave emergency which will unduly prejudice him or her if the hearing is not continued.
- e. Any continuance requested by the subject officer shall toll any BPD disciplinary time period.

9. Presence at Hearing

- a. Each Subject Officer, each BPD Member Witness, and the Departmental Representative, the Complainant, and the Commission's Investigator shall be present and shall testify as required by the City Manager's policy (see Exhibit A) unless otherwise directed by City Manager as requested by the Board of Inquiry. The departmental representative and the commission's investigator shall be present and shall answer appropriate questions addressed to them.

No person who is present at a Board of Inquiry or Mediation session shall become the subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD Members shall be excused without prejudice. The burden shall be upon the BPD Member to establish to the satisfaction of the City Manager that his reasons for leaving were sufficient.

- b. In the absence of good cause, failure of the Complainant to appear within 30 minutes after the scheduled time for the hearing shall

result in the Complaint being dismissed against the subject officer.

- c. The unavailability of the BPD member witness, a complainant's witness, or other witnesses or the representative of a party, may, if good cause is shown to the board of inquiry, be grounds to continue the hearing.

10. Counsel at Hearing. An attorney or other person acting on behalf of the complainant or any subject officer may participate in the hearing, but such representative shall not be required. Witnesses may be represented by counsel. However, each party is responsible for insuring the presence of their counsel at the hearing and the failure of counsel to appear at the hearing without good cause will not delay the hearing or result in continuance.

11. Scheduling. The Chief of Police, or his designee, shall provide the PRC with a subject officer's schedule prior to the scheduling of a hearing, which shall not be held on regular days off, scheduled vacation, or authorized leave of absence.

12. Subpoena Power. The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.

13. Summary Dismissal. After reviewing the investigative packet the Board may summarily dismiss any or all of the allegations in a complaint which it finds clearly without merit, by unanimous vote, on the recommendation of the Investigator, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of the summary hearing, and may appear to argue for or against summary disposition.

14. Summary Affirmance. After reviewing the investigative packet the Board may summarily sustain any or all of the allegations in a complaint which it finds clearly meritorious, by unanimous vote, on the recommendation of the Investigator, its own motion, or that of the Complainant. Summary affirmance will not occur over the objection of the Subject Officer, who shall be notified of the summary hearing, and may appear or make a timely objection in writing.

15. Open Public Hearings. All Board of Inquiry hearings will be open to the public, unless the Board, in order to protect the rights and privacy of individuals, unanimously decides otherwise.

16. Deliberation. After obtaining evidence, the Board will deliberate in closed session, unless a majority of Commissioners vote to deliberate in public. The Board shall not consider any information not received as part of the hearing. The Board may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

After reaching its decision, the Board will reconvene and announce its decision, and state its reasons.

17. Hearing Procedure. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection on civil actions. "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

Evidence shall be taken in accordance with the following provisions:

- a. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If the Subject Officer does not testify in his own behalf, he or she may be called and examined as if under cross-examination.
- b. Oral evidence shall be taken only under oath.
- c. Upon the request of either party, witnesses shall be excluded from the hearing until they are called to testify.
- d. Irrelevant and unduly repetitious evidence shall be excluded

- e. Audience participation or comment is not permitted. The Chairperson shall exclude unruly or disruptive persons from the hearing.
- f. The Chairperson will conduct the hearing subject to being overruled by a majority of the Board members. Members of the Board shall be primarily responsible for obtaining testimony. The Investigator will answer Commissioners' questions on the evidence, points of law, and procedure.
- g. The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.
- h. The hearing will proceed as follows: The Complainant will present the Complaint, and introduce witnesses, if any. The Subject Officer shall then respond to the Complaint, and introduce witnesses, if any. Each person testifying, and each party to the Complaint, may be questioned by the Board and by the parties or their attorneys. After the Board has taken all relevant evidence, each party will be given an opportunity to make a closing statement.
- i. If the Board considers that additional evidence is necessary to reach its findings, it will continue the hearing to a future date unless the parties agree to allow the Board to receive such material in writing without reconvening.
- j. If, upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.

- 18. Majority Vote. All action by the Board shall be by majority vote, except as specified in these procedures. A dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.

- 19. Standard of Proof. No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

20. Categories of Findings

- a. If the investigation shows the alleged act did not occur, the finding shall be "Unfounded".
- b. If the investigation fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained".
- c. If the investigation shows the alleged act did occur, but was lawful, justified and proper, the finding shall be "Exonerated".
- d. If the investigation shows the allegation did occur and the action is not justified, the finding shall be "Sustained".

21. Reports of Board Findings and Notification

- a. Within thirty (30) calendar days of the hearing of the Complaint, the Board shall submit written findings to the Commission Secretary. Circulation of the findings to each party to the Complaint shall include notice of the right to petition for rehearing.
- b. Policy Recommendations by Boards shall be presented to the full Commission for confirmation before being sent to the Chief of Police and City Manager.

22. Petition for Rehearing. Within fifteen (15) calendar days of the mailing of the findings of the Board, any party to the Complaint may petition in writing, with grounds set forth, for a rehearing. Such rehearing may be granted by the PRC, if it is shown that there is newly discovered evidence, material for the party making the application, which could not have been, with reasonable diligence, discovered and produced at the hearing; or if it is shown that there was substantial procedural error likely to have affected the outcome.

Upon receipt of a petition for rehearing by either party, a decision shall be made within twenty-one (21) calendar days as to whether to grant or deny it. When a rehearing is granted, it shall be held within thirty-five (35) calendar days of the receipt of the petition. The 120-day discipline period shall be tolled until the petition is either denied or rehearing concluded.

23. Circulation of Findings. The Commission shall routinely send copies of its findings together with the investigative packet to the City Manager and Chief of Police. The Commission shall make its findings and recommendations publicly available.

24. Amendment of Complaint Procedure

- a. Amendments shall be numbered sequentially and dated, and shall indicate where they are to be placed in the procedures (i.e., "supersedes Section 29", or "read between Section 29 and Section 30").

The PRC Office shall maintain a complete current set of Complaint Procedures.

- b. Amendments shall be distributed to Commissioners, the Berkeley Police Association, City Manager, City Attorney, and Chief of Police.

EXHIBIT 10

**A MODEL FOR CIVILIAN REVIEW
OF
POLICE CONDUCT IN MINNEAPOLIS:**

**A REPORT TO
THE MAYOR AND CITY COUNCIL
FROM
THE POLICE CIVILIAN REVIEW
WORKING COMMITTEE**

SEPTEMBER 1989

7. The Board of Rights shall be constituted of three officers of the rank of captain or higher.

C. State Personnel Board (SPB) Actions

1. State peace officer employees (i.e., California Highway Patrol) may file a written answer with SPB within a specified time period after receiving service of notice of an adverse legal action. The answer will be deemed to be a denial of all of the allegations of the notice of punitive action not expressly admitted and a request for hearing or investigation.
2. The SPB rules specifically state that "every hearing, including the hearing of a disciplinary proceeding shall be public. Any party may be represented by counsel." Title 2, Section 73.
3. The Bagley-Keene Act governs. (Govt. Code Section 11123)
4. Agendas of public meetings and other writings, when distributed to the members of a state body for discussion or consideration at a public meeting are public records under the CPRA as soon as distributed and shall be made available unless it is exempt from disclosure. (Govt. Code Section 11125.2)
5. A copy of the proposed decision must be filed by SPB as "a public record." (Govt. Code Section 19582)
6. Nothing prevents a state body from holding closed sessions during a regular or special meeting to consider the employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session.... Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session. (Govt. Code Section 11126)
7. The SPB may hold executive sessions as provided in Section 11126 of the Government Code to deliberate on (a) recommendations to the Governor or Legislature, or (b) decisions to be reached following hearings related to the administration of the provisions of Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code or of the rules thereunder. (Govt. Code Section 18653)
8. The decision of the SPB shall be entered upon the minutes of the Board. (Govt. Code Section 19583)

I. EXECUTIVE SUMMARY

In April of 1989, the City Council appointed a Civilian Review Working Committee. The Committee after three months of work and deliberations developed the following recommended model for review of complaints by citizens about the behavior of police officers in Minneapolis:

1. The Committee recommends the creation of an independent civilian police review authority with a board of civilian directors. The Committee recommends a board of directors, which is comprised of six elected members who are to be elected as members of the Minneapolis Park Board currently are elected and seven appointed members, who are to be appointed by the mayor and subject to approval by the city council. From the seven appointed members, a chair of the board shall be designated by the Mayor and subject to approval by City Council. The board of directors of the civilian review authority shall be given the powers and responsibilities of creating rules, policies and procedures for the civilian authority. Such rules shall be adopted in an open hearing process, similar to the state Administrative Practices process. The civilian review authority shall have the power and responsibility to hire its staff.
2. The civilian review authority shall receive complaints that allege police misconduct and/or conduct unbecoming a police officer, including but not limited to allegations of excessive force; inappropriate attitude and/or language; harassment; theft; and failure to provide appropriate, adequate and/or timely police service by an individual police officer or police officers. Further, the Committee recommends that the civilian review authority have jurisdiction over complaints which allege discrimination by individual officers.
3. The Committee recommends that a complaint can be filed by any civilian that says that he/she was the "victim" or any other civilian, another officer or employee of the police department or board or staff of the civilian review authority or a member of the police administration. Complaints shall be received in a combination of civilian and police locations, by whichever (civilian or police) personnel are employed there, with all complaint files submitted to the civilian police review authority for processing.

4. The Committee recommends that the civilian review authority will have the authority to screen out complaints before investigation or adjudication, as long as a file is maintained which includes all information submitted and evidence gathered, and the reason for the decision not to go further. The board of the civilian police review authority will have the ultimate responsibility for the establishment of the policies and criteria for such screenings, as well as for referring cases to mediation, and for their individual applications. However, the board may delegate to the authority management and/or staff some or all of such screening tasks.
5. The Committee recommends that investigations are conducted by civilian investigators of the civilian review authority. "Civilian" means not now and never has been a sworn officer of the Minneapolis Police Department.
6. The Committee recommends that adjudication, namely finding facts and conclusions drawn from the facts, be conducted by the civilian review authority. The standard of proof shall be "a preponderance of the evidence." When the civilian review authority has decided a case is ready for adjudication, an evidentiary hearing can be called by the board of directors and/or either parties in the case.
7. The Committee recommends that the board of directors of the civilian review authority shall have subpoena power.
8. The Committee recommends that after adjudication, the board of directors of the civilian review authority shall send to the chief of police the investigative report, the report of any evidentiary hearing that might have taken place, the adjudication report and, when complaints have been sustained, recommendations for discipline. The chief shall then make a disciplinary decision.
9. The Committee recommends that when the Chief does not follow the disciplinary recommendation of the Civilian Review Board, review of the Chief's decision shall automatically be made by the Mayor. The Mayor, then, in consultation with the Chief of Police and the civilian review authority, shall make the final disciplinary decision.

10. The Committee recommends that in anticipation of cases where there is both a complaint with the civilian review authority and possible charges against the officer, the civilian review authority (understanding that it has the right and the authority to go forward with its own investigation) shall, however, attempt to establish non-interference agreements with the Police Department, the City Attorney and the County Attorney to assure there is no interference with other investigative processes. Under this agreement, the civilian review board could suspend its investigation of these cases.
11. Regarding the confidentiality of civilian review board documents and procedures, the Committee recommends: screening documents shall be confidential; complaints (except for summary data), investigative reports and the evidentiary hearings shall be confidential until the accused officer has exhausted his or her appellate rights or the complaint has been finally resolved; and adjudication reports, discipline recommendations, disciplinary decisions of the Chief of Police and appellate decisions of the Mayor shall be public.
12. The Committee recommends that the Minneapolis Police Department and its officers are required to cooperate with the civilian police review authority investigations, subject to protecting the constitutional guarantees of police officers. The civilian police review authority, Minneapolis Police Department and Chief of Police shall develop procedures to implement Miranda and Garrity warnings, to insure cooperation and the protection of constitutional rights. The Minneapolis Police Department shall be required to turn over to the civilian police review authority all relevant documents pertaining to their investigation.
13. The Committee recommends that if in the adjudicating process of a complaint or complaints the board becomes aware of any patterns or practices within the police department about which it is concerned, the board of directors shall make a recommendation to the Chief of Police concerning such patterns and practice.

The three most important components of a police misconduct review system are investigation, adjudication and discipline. As substantial segment of the community believes that these components should be exclusively controlled by a civilian agency. Others who favor some form of civilian review believe that the police department should play a major role in all three components.

The Committee decided that investigation and adjudication should be conducted by a civilian agency and that in cases where a complaint is sustained, the discipline should be decided by the police chief. The Committee believes that this system represents meaningful civilian input in the review process, without undermining the legitimate authority of the police chief.

In cases where the police chief does not follow a civilian review board recommendation for discipline, the Committee believes that the final discipline decision should be made by the mayor. This is consistent with the Minneapolis City Charter which designates the mayor as the person who has final authority for police discipline. Historically, the mayor has delegated that authority to the police chief. Under the Committee's proposal it is anticipated that the mayor will make an independent discipline decision after consultation with the police chief and the civilian review board.

II. INTRODUCTION

Police are an important part of the lives of persons throughout the city. Residents of every community in the city have a stake -- a vital vested interest -- in the commitment, operational effectiveness and behavior of the Minneapolis Police Department and the conduct of its individual members. Similarly, no police department can be effective without the trust, respect and cooperation of the majority of the residents of all of the communities within which it must operate. The vast majority of the officers of the Minneapolis Police Department have earned and deserve that respect and trust. Many, however, do not.

The Civilian Review Board Working Committee's activities and deliberations and the recommendations that emanated from those deliberations must be understood within the real Minneapolis environment and the philosophical context articulated above.

The Minneapolis Police Department and Community Relations: A Short History

The idea of civilian review of the Minneapolis Police Department is not new. In 1963, a civilian review board was created in Minneapolis to receive complaints from civilians against the police department. There was a very brief mention of this in a 1964 article ("The Administration of Complaints by Civilians Against the Police") in the Harvard Law Review: "A civilian board was also appointed in Minneapolis but has never functioned, having been advised by counsel that its unofficial status was not sufficient to clothe its members with an absolute privilege in defamation actions."

In 1967, one of the responsibilities of the Minneapolis Civil Rights Department when it was created by state legislation was that of Ombudsman in complaints against city departments and agencies. The department apparently experienced a significant lack of cooperation from individual officers and the administration of the police department as it made efforts to investigate complaints against police officers.

In 1969, there was organized activity on the part of the American Indian and African American communities around the issues of police brutality and racism, especially associated with a protest demonstration which had been violently broken up by police officers. Protesting organizations and the Minneapolis Tribune in an editorial called for greater oversight of police misconduct. Mayor Charles Stenvig felt, however, that no change in procedure was needed.

While a contentious impetus for the creation of a civilian review board may not be new, it is not, some argue, the most desirable prelude to the process of creating an effective civilian review mechanism -- arguably a process in whose very existence lies a precondition of dialogue and cooperation.

A 1986 report by the New York City Police Department Civilian Complaint Review Board commented on the implications of such a beginning. The report said, "an additional, perhaps more onerous burden on the relationship between the investigating or reviewing agency and the department it monitors often lies in the climate in which the agency was created. The majority of the (review systems) discussed in this report were instituted by legislation following violent, controversial police incidents in which racial brutality was charged. ...the prevailing attitudes of Police Chiefs...and their command structures can vary greatly, and a legislative solution imposed on a defensive police department was unwelcome [by them] in the extreme."

In resolution number 89R-089 dated March 17, 1989, Minneapolis City Council members voted 12 to 1 to state the minority communities "have a lack of confidence in the Internal Affairs Unit of the Minneapolis Police department", and that, "all allegations of police impropriety must be impartially investigated in order to maintain the confidence of the citizenry". With these words as a prelude, Council created this Committee.

The Committee's purpose, the resolution said, is "to determine what type of civilian review board or other method of external review of the Police Department should be established."

Activity of the Committee

The charge which established this Committee clearly stated its task: to propose an option or options for civilian review of the Minneapolis Police Department. The charge did not instruct this committee to evaluate the performance of the current complaint process nor to evaluate the performance of Minneapolis Police officers nor to evaluate the legitimacy of individual complaints against the department. As a matter of fact, the City Council resolution does not even pose the question of whether Minneapolis is in need of a police civilian review board. For this reason, the Committee concerned itself only with the task of developing an effective civilian review model to recommend to the Mayor and the City Council.

The major activities of the Committee:

1. To acquaint itself with how complaints against Minneapolis police officers are currently handled, the committee received a briefing prepared by Committee staff on current complaint procedures at the Minneapolis Police Department. In addition, Deputy Chief of Police Douglas F. Smith, and former IAU Panel member Judge Isabel Gomez made presentations to the Committee.

2. The Committee heard testimony from Werner Petterson of the Community Relations Service of the U. S. Justice Department. Petterson is an authority on the design of civilian review boards nationwide, and he discussed the design and operation of civilian review mechanisms in various North American cities. Petterson outlined what he felt were the essential components of a police review mechanism, as is practiced in the United States and Canada.

3. Additionally, a subcommittee chose four speakers to discuss with the Committee during its third and fourth meetings various issues in the theory and practice of civilian review:

Wesley A. Carrol-Pomeroy. Pomeroy is educated as an attorney and familiar with civilian review from his exposure to it as Chief of the Berkeley, California police department, and from his past tenure as president of International Association of Civilian Oversight of Law Enforcement (IACOLE). He currently is Director of the Dade County Independent Review Panel, the civilian review mechanism for Dade County, Florida;

Wayne Kerstetter. Also educated as an attorney, he headed internal affairs for the New York Police Department, served as Superintendent of the Illinois Bureau of Investigation and currently holds a teaching position in the department of criminal justice at University of Illinois at Chicago;

Peter Ring. He is a professor in the School of Management at the University of Minnesota, an attorney and formerly employed by police departments in New York, Chicago, and Santa Fe in administrative and legal consultant positions;

Fred Rice. He is a former Superintendent of the Chicago Police Department, and was police officer there for 33 years.

4. The Committee held two public hearings on July 18th and 20th, at which 23 persons made presentations and responded to questions from the Committee.

5. The Committee solicited and received specific proposals from the public.

6. The Committee held four meetings to discuss and vote on the recommendations to the Mayor and City Council. An important factor in the Committee deliberations and decisions was a Committee rule, adopted at the first meeting of the Committee, which required all recommendations to be passed by a majority of the full committee. Since there were twenty committee members, eleven votes were required for passage even though two members never participated in those meetings.

III. COMMENTS OF SPEAKERS

From the presentations of the seven people who appeared before the Committee during its self-education phase and from the discussion between members of the Committee and the speakers, a basic core of contentious issues in civilian review emerged.

In an effort to clearly delineate the interests and concerns of the Committee as it examined issues and options and the debate around them, below is a summation of the arguments made by the speakers regarding each of major components of a civilian complaint review mechanism.

Reception of Complaints

Few police policy commentators who consider the receipt of citizen complaints (whether in a civilian or police unit) feel that the reception of complaints should be limited to police locations or police personnel. Hennepin County District Court Judge Isabel Gomez said, "a significant group of people will never make a complaint in a police station to a police officer...P.R. won't convince people with no power to go to the heart of the state, where they can lock you up, to do anything."

Wayne Kerstetter said that complaints should be received in a milieu where citizens are comfortable coming forward and making a complaint, adding "I feel complaint reception and complaint screening lends itself very nicely to a civilian agency doing that."

Werner Petterson said various civilian review bodies across the country accept complaints in locations such as the Police Department, the Office of the Mayor, the City Manager's Office, the Human Relations Commission, as well as various designated community organizations.

Screening of Complaints

While the option of screening out complaints as frivolous or too trivial to merit investigation clearly holds potential for abuse, commentators suggest such screening must be an option for a civilian review system to function effectively. Kerstetter called this option one of the basic functions of the review process, stating that frivolous complaints do exist, and that a great amount of resources can be wasted investigating these.

Pomeroy, however, strongly cautioned against screening, stating that it is difficult to determine if a complaint is frivolous or trivial and "anyone who brings a complaint certainly feels its serious enough to go to the trouble and come and complain about it."

Kerstetter said "it has a lot more credibility to have a civilian screening out a complaint than a police officer. In those cases I would suspect that there would be almost 100% correlation between a police decision to screen a complaint and a civilian decision. But it is a lot better to have a civilian doing it because they have a lot more credibility with the community."

The Minneapolis Police Department currently allows Precinct supervisors to attempt to resolve complaints which they perceive to be procedural questions, where an explanation of the legal rights of the officer or the particular procedural circumstances of the event may satisfy a complainant and resolve a misunderstanding. These may be complainants who have no dispute with an officer over what took place, but rather the correctness of the action. The Minneapolis Police Department does document these resolved contacts. According to Department representatives an enormous number of office contacts such as these are resolved with an explanation in this way.

Pomeroy drew the question as one pertaining to the general approach of the department towards complaints. "No complaint should be thought too trivial to get official attention," said Pomeroy. "A full investigation isn't always necessary, but attention must be paid to every complaint...there are other solutions like conciliation and mediation which can be agreed to at the point of complaint in some cases."

On the issue of conciliation and mediation, Kerstetter, Pomeroy, and Petterson all stated that conciliation and mediation should be part of the reception process where the civilian review board feels they do not need to go to full investigation, and the complainant is willing to see it resolved by alternative means. "Active conciliation and mediation can sometimes resolve the issue," Kerstetter said, "...leaving the citizen feeling they have been treated with respect." In the words of Petterson, "Sometimes the complainant would be happy with at least an explanation from somebody."

This doesn't imply these commentators supported screening complaints simply because a complainant was willing to settle for some sort of informal conciliation. This just applies to complaints which appear at their outset to clearly have no basis. It is important with such situations to make sure the process is fair and to make sure the citizen believes that the process is fair.

Investigation of Complaints

The question of who should conduct investigations of civilian complaints against individual police officers elicited a great array of concerns and arguments from commentators to the Committee.

Indeed, to those who addressed the committee, the issue of investigation in many ways was the heart of the review process. The power of the investigation process is in its ability to determine the outcome of a complaint. Reception, adjudication and meting out discipline all rest on the competence and credibility of the investigation.

The current controversy about the quality of the response of the police department in Minneapolis to citizen complaints often touches on the investigations. On the one hand, in her presentation to the Committee, former IAU Review Panel Member Judge Isabel Gomez told committee members "We felt the investigations themselves were fine..." On the other hand, a recent report by WCCO TV's I - Team pointed to at least one 1989 police brutality complaint where no witnesses had been interviewed by the IAU some four months after the judge in the case of the complaint (Judge Gomez) requested that the department's investigators to look into the case, a case with at least one civilian witness besides the complainant, and several police officer witnesses.

Several possible ways to investigate complaints against the police have been created and are in operation in cities in North America:

- Investigations conducted by sworn officers from the Police department (such as in Minneapolis, Atlanta, and Portland).
- Investigations conducted simultaneously by police investigators and civilian investigators ("parallel investigations", such as in Cincinnati, Berkeley and New Orleans).
- Investigations conducted by civilian/police teams of investigators (such as in Detroit and Miami).
- Investigations conducted independently on appeal from a police investigation (such as in Dade County and Toronto).

- Investigations conducted solely by civilian investigators. While Chicago has original citizen investigations in certain cases, its civilian review office does not investigate all cases and it is a part of the police department. Similarly, San Francisco's Office of Citizen Complaint conducts all of its investigations with civilian investigators, but the entire office itself is under the jurisdiction of the Police Commission.

Petterson said there is very little research on what is the most effective assignment of the investigation process. As a general rule, most who spoke before the committee declined to propose a specific choice of how investigation should be conducted in Minneapolis or what general model for civilian review was best for the city. Most stated that a model for civilian review by its nature is created in response to certain political, cultural, and demographic realities. They felt that no one plan was best for all cities, and that Minneapolis had unique needs and characteristics which should lie in the heart of what form of civilian review in general and the structure of investigations in particular should be created.

1. Investigations: Training and Qualifications

While some of the speakers before the committee had more specificity to their idea of qualifications for investigators, all felt the requirements and skills of those who are to investigate complaints should not be a question that is taken lightly.

"It takes a special kind of person to take complaints against the police," Pomeroy said. "It takes a person who is able to relate to all manifestations of the community...the person must understand police departments, have a feel for the culture...have the police officers' respect." Pomeroy felt that qualified candidates could be found from those with experience in other police departments. "One could also gain the necessary experience by working as an investigator for the district attorney's office," Pomeroy said.

Peter Ring said that defining the qualifications of investigators and the scope of their powers are the most fundamental determinants of the success or failure of a civilian review mechanism. Further, he said, an investigator's success depends upon his or her ability to gain the trust of those being interviewed. The ability to find facts and separate fact from fiction are also vital to an investigator's success, Ring said.

Chicago hires civilians with Master degrees in criminal justice to serve as investigators of the police department. These individuals are given a three week training and then a caseload. This practice was begun essentially for credibility purposes. Former Chicago police superintendent Fred Rice said that in order to eliminate questions regarding the objectivity of the investigations, "...we hire no one with a police background."

Commentators did call the training of civilians with no previous investigative experience an expensive process, however, and said the outcome may indeed have produced less-than-thorough investigations.

"The [Chicago civilian] investigations in my estimation are not as thorough and as comprehensive as investigations which are done by the internal affairs division," said Fred Rice. "...they're not as familiar with department rules and regulations as police investigators are. They're not as curious. Police investigators are always looking for the angles, something that doesn't appear on the surface. Civilians have a tendency to be a little more naive until they get in the game for a length of time, and then they become better investigators."

Petterson said that training of civilians to be investigators is a great expense in Chicago, and that "there are a great number of skilled and already trained civilian investigators who would be quite competent." Pomeroy also felt that training a civilian to do these things takes a great amount of time. Some commentators used the situation in Chicago to suggest that Minneapolis, where fewer investigators would be needed and thus perhaps pay higher salaries, could find many already-trained, experienced and competent investigators.

Civilian investigators in most other agencies appear to have had previous investigation experience.

"Minneapolis is fortunate because it is dealing with a relatively small number of investigators necessary to conduct civilian review," said Kerstetter. "Minneapolis could afford to have a national search, pay the moving expenses and salaries necessary to bring in half a dozen highly qualified people with years of investigative experience already behind them...highly qualified minority investigators also could be brought in. People from the inspections division of the IRS, federal investigators, investigators from the Office of Special Investigations of the Air Force. If there was proper community involvement in their selection these people would be credible."

"I think you can find good investigators outside of the police department," Ring said. "You may have to pay more for them, but it's a question of priorities. Some of the best investigators I've ever run across are good lawyers. The military has a number of operations in which the investigation of military personnel is critical...increasingly you find in the federal government and in some state offices of the inspector general, people who investigate agency misconduct. These are all people who've developed a set of skills about cutting through unclear memory, purposefully clouded, covered trails...I think you can find very good, very objective investigators inside police departments, but the problem is convincing communities they are objective," Ring said.

2. Investigations: Weaknesses of Police Investigating Police

In the fourth and final report of the IAU Review Panel dated May 20, 1985, Panel members wrote that there had been significant opposition within the IAU to an earlier recommendation of the Panel. The Panel had recommended that IAU Investigators forward a recommendation for decision to the chief with the results of its investigation. Several commentators indicated that those who investigate a complaint hold an important perspective on the findings and could offer a great deal of insight to the adjudication process by forwarding their recommendation. The reason IAU members opposed doing this, Panel members wrote, was because "...an investigating officer does not want to make a negative recommendation concerning a fellow officer with whom he or she must later serve."

Recirculating internal affairs investigators back into the general population of the police force could not only hamper an officer's willingness to make an impartial recommendation for finding of fact, it could also affect his or her ability to conduct full investigation, some commentators and many Committee members believe.

In Chicago, according to Rice, investigator/police proximity, has proven to be a problem in the past. "You find (purposefully lax investigations) more prevalent (with) investigations that were handled by [precinct] supervisors...as opposed to members of the Internal Affairs Division. The Internal Affairs Division in Chicago is more removed, it is centralized, downtown. For the most part they don't know the accused officer out there, they can render a much more impartial investigation than the supervisor out at that particular unit can...he knows the fellow, he knows the conditions he's working under, he might sympathize with those conditions... He'll have a tendency to not sustain or "unfound" that investigation, based on his personal proximity to the situation. That's given of him. I don't know how you're going to change that."

3. Investigations: Weaknesses of Civilians Investigating Police

If members of the police force with a working relationship with those they must investigate was a concern, so was turning ordinary citizens into investigators. While this process is primarily associated with civilian review in Chicago, it has its implications for civilianization of oversight of the police department as a whole. The two major arguments against civilian investigators were the quality questions discussed above and the "Selling Out" by civilian investigators.

The "Selling Out" argument is that civilians newly initiated into investigating police have a tendency to sympathize with officers, thereby reducing their ability to push along an investigation as firmly and to recommend a decision with conviction and objectivity.

"A reality about someone who is learning about the police, is that they go right along with the police and soon become sympathetic to the police. They see how hard the police have to work and they relate to that. The same thing could happen to a civilian investigator you have to train, " said Pomeroy.

"It's been my experience over twenty years that critical but intelligent people become more sympathetic just by seeing what police go through on a day-to-day basis. That's going to happen, whether they work [in tandem] with a police officer or not," said Kerstetter.

4. Investigations: Public Perception Question

Both Ring and Rice argued that the question of who makes a better investigator is almost moot in the face of the political realities of dealing with public perceptions on the issue. Both felt that Police officers held an unequivocal advantage as investigators of police misconduct, by their virtue of familiarity with processes and personalities within police departments. Nonetheless, both felt incontestably strong investigator candidates could be found outside of police departments, candidates who could elicit more trust from the public regarding objectivity in the process.

The whole purpose of civilian investigation, according to Fred Rice, is "...because people perceive police investigations of police, as not being true investigations - whitewash, we take care of our own - and perceive civilianization of the investigation as a more balanced investigation. You're dealing in perceptions...You're servants of civilians, of citizens. And you better be cognizant of their perceptions of your actions. Otherwise you won't be successful as an agency," Rice said.

"It's a trade-off," said Ring. "You trade off a certain amount of experience (by hiring civilian investigators) for a certain comfort level."

Adjudication/Finding of Fact

There was very little discussion by the speakers about the process of adjudication of cases -- the finding of facts and the drawing of conclusions from those findings of fact.

"I don't think it takes any special skill to determine what the truth is. I think you can determine what the truth is if you have the facts before you," said Pomeroy. "If the investigation is done properly and you have the witnesses interviewed and you have the tapes available, the transcripts of those tapes, and you can call the witnesses before you and it seems that they are telling the truth, you can make a determination with a preponderance of the evidence that you believe it's either true or not true. You don't have to be specially skilled to do that."

According to Werner Petterson, most civilian review bodies which investigate complaints, adjudicate them as well.

Disposition/Discipline

Without disagreement, every commentator who addressed the Committee felt that the Chief of Police needs to retain control of the authority to discipline officers. Additionally, each of these speakers cited the disruption of the chain of command as the primary reason why they could not support putting the disciplinary decision outside of the police administration.

Peter Ring said, "If the organization views that discipline of conduct...is external to the organization, if determinations about what conduct is acceptable behavior is external to the organization, then significant peer and internal pressure is removed....If there is one area which I would be unequivocal on, no matter what else you do, it is absolutely essential that the person who runs the department decides on the issue of whether someone's conduct is inside or outside the bounds, and what the penalty ought to be. You can construct all kinds of appeals after that...(but) take that away...and to use a gender-based word, you emasculate that individual's authority when it comes to corruption. And that ultimately leads to individuals behaving by their own rules in the department."

Fred Rice said, "You violate basic management principles when you give (the Chief) that awesome responsibility for running something as complex as the police department...and not giving him commensurate authority to consummate that responsibility...Plus another thing, you have to have someone you can fix responsibility on, you're not going to divide responsibility all over the place. Who's going to be responsible? God? You have to give the person who is charged with the responsibility of running the department that responsibility. And if he's not running it properly, 'there, you, you're it. Go.' And put somebody in who'll run it right."

Kerstetter said, "The surest way to destroy the quality of police service in the city is to take the authority and responsibility for discipline away from the police chief ... If you take the discipline away from him, you take the accountability out of the system, and that destroys it."

Pomeroy said, "The Police Chief should be accountable for what happens in his or her department. He or she should be responsible for determining and handing out discipline. If you take that away from him or her, you let them off the hook. You also eliminate a good strong tool for him to use as a leader; that said, there are a number of checks you can place on the Chief's disciplinary authority." He added as a caveat, however, "...the people have a right to say what they want the police to be. The people have a right to decide who will administer the discipline. You have a right to say how your police will be governed."

Appeals, System Review

Pomeroy envisioned a process where the Chief of Police makes a decision on discipline and, "then in a certain way the ball shifts back to the civilian agency. They, then, have standing to comment, to criticize him if they find that his findings of fact don't seem consistent with the evidence that was solicited, or if the penalty was inappropriate. I think they should have standing to comment to the mayor in individual cases, and to the public as a matter of overview...I think the investigators ought to make their report to the civilian panel, which should make recommendations to the Chief about what they think the discipline ought to be, and let him decide. That puts him out in front. He may think they're wrong, but that's a dialogue the public's entitled to hear...In Florida we disagree with some regularity about the amount of discipline imposed, and we make it very clear what we think about it to the Director in a very positive way, an assertive way. It doesn't change that decision, but it does influence what discipline is imposed in the future, and brings up some discussion about it, some justification. You can ask him why he did it, and he has to tell you."

Kerstetter saw this as THE role for civilian review, "... That's why you have a civilian group with resources and standing to criticize the chief, if there's a pattern of leniency," he said.

Ring and Rice both emphasized that an appeal process should not be "dragged out." Ring said, "I think the issue again is a trade-off issue. A trade-off of trying the patience of those who are awaiting an outcome. The police officer clearly does have a lot of bites from the apple. The member of the community has whatever staying power that person as an individual typically has ... Like civil cases in law, plaintiffs never come out ahead in the end, because it's six or seven years before they get to trial. People have memories that fade. You need a process that moves with dispatch, to reach a judgment. The longer you push that process off the more likely you're going to have people with legitimate complaints walk out the door. . .While you may have a nice looking record in the agency, if the complainant withdrew, you haven't solved any problems."

Civilian Review: Issues in Practice

In addition to discussing specific components of a review process, the speakers had comments on the operations of civilian review entities.

Several of the speakers commented that they believed that there is a probable downside in the practice of training civilians as investigators as done in Chicago and a potential downside of independent investigators in general, specifically, having the police department respect and cooperate with the process.

According to Rice, civilian investigators in Chicago "...have not been totally accepted by the rank and file police officers...most police officers feel that civilians cannot sympathize, nor empathize with the problems facing policing because they are in fact civilians."

One cure to this problem, according to a 1986 study conducted by the New York City Police Department Civilian Complaint Review Board, lies in giving civilian investigators substantial power and backing. To quote the report, "...more successful relationships between civilian agency(s) and police department(s)/were predicated on enabling legislation which gave the independent agency subpoena power and access to department records, coupled with strong, supportive municipal government which backed the agency up and listened to its recommendations." (Nationwide Survey of Complaint Systems, p. 29)

Pomeroy also felt a spirit of cooperation had to exist for a civilian review agency and investigation to be successful. Said Pomeroy, "No model ever works without nearly everyone wanting it to work, and having confidence that it will work."

There was a suggestion made in the discussion that there would be the problem that police will become antagonized by the process, and begin to turn down difficult calls for fear of the consequences of the review process. Both Pomeroy and Kerstetter said they knew of no case where the quality of police service had declined because of civilian review. "...It's conceivable," said Kerstetter, "but I think it's very possible to structure meaningful review without disrupting the operations of the police department. If you wanted to you could sit down and think of a system that would have that effect. But it is in no way necessary to create that kind of system to do what you need to do."

Kerstetter indicated that a more likely consequence is that civilian will be more lenient than police administration. "The Chicago review mechanism is often more lenient on officers in terms of disciplining officers than the police department would be. The idea that civilian review would be really tough on cops is unsubstantiated. Philadelphia review had this same phenomena."

Petterson also felt that officer morale is unlikely to be affected by civilian review. He indicated that there are studies that have shown that officers forced to work within civilian review systems come to prefer them to internal systems, finding them more lenient than review by their peers within the department. Petterson said some of these bodies, having been in place for a while, can become compromised. "Somehow it happens," said Petterson.

A committee member addressed this topic at this point in the discussions, saying, "for myself I see it as the police being very defensive, thinking that when the people are crying police brutality, (that means that) they don't want the police to do their jobs, and that is not true."

Both Kerstetter and Pomeroy used their last comments to discuss the importance of a review system having the cooperation of all parties. "No matter what process you come up with, it will not work unless the principal players want it to work," said Pomeroy. "The community and the police have to want it to work. Otherwise it will all go down the drain. Philadelphia had a beautiful review system in the early sixties, for example, but police opposition finally rendered it impotent."

Kerstetter added, "It has to be a system that at some level the community believes in, and on the other hand if you create a system with wonderful community credibility but the police find it intolerable and they're going to resist it in the courts or the streets or whatever, then it's going to come to naught."

IV. PUBLIC INPUT

Public Hearings

In July, this Committee held two public hearings to receive comments and proposals regarding civilian review. Those who testified recommended a wide variety of structural proposals but there was a recurring set of concerns and comments in the testimony of these speakers. Most who spoke wanted a civilian review board "with power" and "accountability to the community."

The vast majority of speakers wanted a review board with independent investigation, subpoena power and power to make binding disciplinary decisions. Most also wanted board members to represent communities traditionally affected by police misconduct, and such members to maintain contact with these communities.

On the question of board composition, speakers were primarily concerned about representativeness, a board which represented "communities plagued by the police" as homeless advocate Herb Frey said. Janice Command of the Coalition for Police Accountability said the composition of the board should be integrated racially, sexually, by sexual orientation and religion.

However, another speaker felt that a representative composition of board members could not be legislated. "I don't believe that the board needs to be comprised of people who represent certain types of people in our community, but people who are objective, rationale, and able to have some vision and look into the future," said Diane Michels of Minneapolis.

Generally, most who spoke before the Committee came as advocates of substantial change in the manner in which complaints against officers are handled. These individuals for the most part felt any change which did not involve a new and significant distribution of power would change little "out in the streets."

Many speakers spoke to the requirement that independent investigations were necessary to maintain credibility with the community. Others said they simply did not trust a police role in the investigative process. Many felt that a review board without subpoena power would be ineffective.

Many felt that the review board should hold the power to discipline officers in sustained cases. Jim Davnie of Minneapolis said that a review board needs such power to be effective, and that such a power should be with the body which has heard the evidence, weighed the testimony and come to decision. Charlene Martin of Minneapolis echoed this, saying giving a review panel final authority on discipline "sends a clear message that nobody, including the Police Chief is above the law." She said a review board with disciplinary authority demonstrates to the public that it does not have to reach the level of rioting in the community before positive action is taken to meet the needs of the community.

Finally, some looked at the political process associated with establishing a review board. Attorney Rick McPherson urged that this Committee's recommendations be as strong as possible, saying that whatever options this Committee recommended would be subject to further compromise at the hands of City Council, and that a weak initial proposal by this Committee may become meaningless under further compromise.

Written Proposals

When the Committee publicized its public hearing dates, it also requested that those who had suggestions concerning civilian review should submit them in writing to help the Committee in its discussions. The Committee received twenty written submissions which can be found in the appendix of this report. The suggestions are a mix of opinions, precise models for civilian review and anecdotal observations about police misconduct. Again, if a generalization can be made about these submissions, it is that most supported a board with both power and accountability. Also, many writers felt the review process should be a public one.

On the question of giving a review board a substantial amount of power, Arthur Rudolph-LaRue of the Minnesota Peace and Justice Coalition wrote, "the board must have the power to compel testimony from witnesses, and to obtain evidence. Complete discovery of the facts hasn't a chance without such authority." Also on the topic of subpoena power in an independent investigative body, Professor Peter Erlinder of William Mitchell College of Law wrote, "The Board should have subpoena power to allow full investigations to exonerate officers or to impose sanctions. Without subpoena power, officers would be disadvantaged because they would be required to cooperate, but citizen-witnesses would not be required to give evidence. This might prevent the Board from hearing evidence from reluctant witnesses which would exonerate the officer."

Tim Cole of the Minneapolis Commission on Civil Rights Task Force on External Review wrote, "[t]he Task Force found that an External Review mechanism can function effectively only when it has the power of subpoena necessary to obtain the documents, records, and testimony which are crucial to an investigation or hearing."

On the topic of discipline, Erlinder wrote, "As pointed out by Councilmember Dziedzic, unless the Board has the authority to discipline officers, the integrity of the whole process will be undercut. A power to recommend is only valuable if the entire record of the Board's deliberations can be made public to support the recommendation, so that the validity of the Board's recommendation and the actions subsequently taken by the Police administration, can be evaluated. In the choice between Board authority to discipline, and full public disclosure of Board proceedings, disciplinary authority seems preferable in terms of Department morale considerations."

The Minneapolis Coalition for Police Accountability, Minnesota Rainbow Coalition, and Minnesota Coalition for Battered Women as well as several individuals felt that a review board should have disciplinary authority.

On the topic of confidentiality, several who wrote to the Committee advocated that Board proceedings should be more public than confidential. Professor Erlinder wrote, "board proceedings should be public unless objected to by the complainant or the officer in question....The results of the Board's deliberations must be public to build credibility in the process and to give the communities about police misconduct a basis to evaluate the performance of the Board over time."

Jim Remer of the Community United Against Violence also wrote on this matter, "[t]he investigative process, findings-of-fact and proceedings of the civilian review board should be open to the public view to the greatest extent possible. While we recognize that public access may cause some gay and lesbian people to hesitate to come forward, we believe that having a secret process behind closed doors diminishes accountability and results in an ineffective review process."

The Minnesota Rainbow Coalition recommended that, "all hearings shall be open to the public." The Coalition for Police Accountability also wrote in partial support of open proceedings. Their recommendation stated, "Board proceedings should be public unless objected to by the complainant or the officer in question....The results of the Board's deliberation must be public to build credibility in the process and to give the communities affected by misconduct a basis to evaluate the performance of the Board over time." Sandy Beitsch of Minneapolis wrote, "the proceedings of the Board should be open to the public. This will serve to keep the Board members honest and to foster the public's trust in its workings."

V. THE CIVILIAN REVIEW MODEL: ITS CENTRAL COMPONENTS AND A SUMMARY OF THE MAJOR POINTS OF DEBATE

The Board of Directors

The Committee recommends the creation of an independent civilian police review authority with a board of civilian directors. The Committee recommends a board of directors, which is comprised of six elected members who are to be elected as members of the Minneapolis Park Board currently are elected and seven appointed members, who are to be appointed by the mayor and subject to approval by the City Council. From the seven appointed members, a chair of the board shall be designated by the Mayor and subject to approval by City Council. The board of directors of the civilian review authority shall be given the powers and responsibilities of creating rules, policies and procedures for the civilian authority. Such rules shall be adopted in an open hearing process, similar to the state Administrative Practices process. The civilian review authority shall have the power and responsibility to hire its staff.

The Committee did not easily answer the question of how board members should be chosen. All members of the Committee shared the belief that board membership must be accountable, capable and representative of communities most affected by police misconduct. The agreement ended there however, as Committee members ultimately came to examining the strengths and weaknesses of the electoral process and the appointment process.

Those committee members who supported the election of board members made the case that credibility among those most affected by the misconduct of police officers required separation from the city government which has been blind to the behavior and unresponsive to the community concerns. An electoral process would inherently be more credible and would provide members that are not " beholden to the politicians."

Members need to be appointed, others argued, because if membership were left up to election then classes of people who are routinely the subject of police misconduct -- being electorally in the minority -- would most likely go unrepresented. One member said, "the Hispanic community could only be on this board through appointment."

Most of the arguments for appointing board members, however, focused on the problems with holding elections for this type of position. One Committee member wondered "whether anybody would really run for this position." Another called the possibility of an electoral process "chaotic at best" and "unrealistic". One Committee member said, "I'm not comfortable with electing a quasi-judicial board. People run on policy issues." His concern was echoed by another Committee member who stated, "You're going to get with elections, someone who says he's going to go in there and take aim. Running on an agenda is quite different than deciding if someone used excessive force." One member predicted an electoral process would be particularly open to the involvement of special-interest money, particularly from the police federation.

Those in favor of electing board members and against the appointment process called it a "problem of credibility", with the community. They also dismissed the alleged mechanical problem of election as minimal and solvable.

A mixed board of elected and appointed members was supported by the needed majority as a reasonable resolution to the question. One member said that "this board has a chance to educate the community, that's why we need as many types of people as possible on the board, and why I support a combination of elected and appointed members."

Finally, the size of the Board was an issue of contention for Committee members. The primary benefit of a large board was seen as allowing for greater representativeness. The benefit of a smaller board was seen to be greater efficiency of operation.

There was very little debate on other aspects of the composition and functioning of the board of directors. There was unanimous agreement with the concern of one member that policies and procedures be developed and decided in public and "are not established by fiat."

Powers and Responsibilities of the Civilian Review Authority

The civilian review authority shall receive complaints that allege police misconduct and/or conduct unbecoming a police officer, including but not limited to allegations of excessive force; inappropriate attitude and/or language; harassment; theft; and failure to provide appropriate, adequate and/or timely police service by an individual police officer or police officers. Further, the Committee recommends that the civilian review authority have jurisdiction over complaints which allege discrimination by individual officers.

What type of complaints should the civilian review board hear? The initial concern expressed by most Committee members on this question was that categories of acceptable complaints be as inclusive as possible. There was considerable debate however, on the questions of complaints which allege inadequate or untimely service, and complaints which allege discrimination.

Those in favor of the "inadequate or timely service complaint category" felt that failure to provide service can be a form of police misconduct. One committee member noted an incident where a North Minneapolis man died of an asthma attack while police officers failed to call an ambulance as an example of misconduct through inadequate service. Another Committee member said that domestic abuse situations are often cases where officers "don't like to respond."

Another side of the argument, some Committee members argued, is the sheer weight of the numbers of calls faced by the police department. "The dispatching of calls is not controlled by the Police Department, it's a problem of jurisdiction," said one member. Another said that there is often an overload in the complaint room, "at any given time dispatchers can wipe out pages of calls by prioritizing." He added, "Maybe the City can get more officers so we do have enough officers to answer all the calls."

Committee members felt its recommendation should distinguish between an individual officer's failure to act and a pattern within the department or departmental policy. Committee members felt that the specific language of the recommendation would open up the complaint system to what it felt was a real instances of police misconduct, while making allowances for unintentional failure to provide timely service due to the process of call dispatching and prioritizing.

The Committee member who proposed the recommendation that the Board hear complaints alleging discrimination, directed his comments towards the question of whether this was not a duplication of services under the jurisdiction of the Minneapolis Department of Civil Rights. The Committee member called the proposed civilian review board a disciplinary board, while characterizing the Civil Rights Commission as a redress for victims. "The two focuses are different," said the member. "The coinciding jurisdiction is appropriate."

Another member added, "the remedies (of the Civil Rights Commission and a civilian review board) are going to be different." Other Committee members spoke in favor of the recommendation. One said, "there is going to be some areas of overlapping jurisdiction between the two bodies. It is important that we assure people that discrimination is [seen as] a form of police misconduct."

One member felt the two bodies accepting the same type of complaints was unnecessary, saying, "it doesn't add or subtract anything." Another member questioned the procedural relationship between the two bodies.

The language in the recommendation is meant to assert the primary jurisdiction of the civilian review authority (vis a vis the Civil Rights Commission and Department) in responding to citizen complaints about the conduct of individual police officers.

Who May File a Complaint and Where Should They be Received

The Committee recommends that a complaint can be filed by any civilian that says that he/she was the "victim" or any other civilian, another officer or employee of the police department or board or staff of the civilian review authority or a member of the police administration. Complaints shall be received in a combination of civilian and police locations, by whichever (civilian or police) personnel are employed there, with all complaint files submitted to the civilian police review authority for processing.

There was very little debate and no disagreement in the Committee about these questions. The importance of having an environment in which all potential complainants would feel comfortable was emphasized repeatedly.

Complaints with Potential for Criminal Prosecution

The Committee recommends that in anticipation of cases where there is both a complaint with the civilian review authority and possible charges against the officer, the civilian review authority (understanding that it has the right and the authority to go forward with its own investigation) shall, however, attempt to establish non-interference agreements with the Police Department, the City Attorney and the County Attorney to assure there is no interference with other investigative processes. Under this agreement, the civilian review board could suspend its investigation of these cases.

There was considerable discussion about this question of interference by a civilian review investigation with a criminal investigation. There was unanimity among Committee members that civilian review board investigations should not damage in any way active criminal investigations.

However, some members were concerned that a mandated policy which called for routinely suspending investigations which hold criminal potential could significantly weaken the investigative powers and ultimate utility of the civilian review board. This was the effect of the 1971 amendment to the ordinance governing the Civil Rights Department. "Delay causes staleness", in the words of one member. Civilian review board investigations, like all investigations, rely on being able to interview witnesses and take testimony within a reasonably short amount of time.

On the opposition, one member repeatedly voiced a concern that this recommendation will interfere with criminal investigations. He said, "Simultaneous civil and criminal investigations could cause interference, if an investigation becomes criminal at a later point, information received by a civilian investigation will not be usable by criminal investigations." Another member's motion supported this belief by arguing to limit the board from releasing its findings of fact and recommendations for discipline until any criminal investigation and prosecution has been completed. The motion failed to gather enough support to pass.

Other members argued that the prospect of interference was not likely. One said "there are two tracks here, which need not interfere with each other." Another said, "civil and criminal investigations go on simultaneously now in other areas, why not this one?" Another member said "the functions of the two investigations are separate and should go forward independent of each other."

The majority of the Committee saw no reason to mandate automatic suspensions of board investigations. The Committee felt a general recommendation as in the language of the recommendation was more suitable than unnecessarily restricting by charter. As one member put it, "common sense says that the process must have flexibility." The Committee felt maintaining a level of flexibility to the process was important to the empowerment of a civilian review authority and its investigators, and that such investigators could operate effectively within a general non-interference agreement with other investigative agencies.

Screening

The Committee recommends that the civilian review authority will have the authority to screen out complaints before investigation or adjudication, as long as a file is maintained which includes all information submitted and evidence gathered, and the reason for the decision not to go further. The board of the civilian police review authority will have the ultimate responsibility for the establishment of the policies and criteria for such screenings, as well as for referring cases to mediation, and for their individual applications. However, the board may delegate to the authority management and/or staff some or all of such screening tasks.

The question of screening and mediation were not controversial. Committee members were swift in agreeing to this recommendation. To maintain a reasonable amount of discretionary flexibility necessary to efficiently run any organization, the Committee felt the board must be able to screen complaints from full attention at any time in the process. The one caveat in this recommendation -- that record be kept of every complaint which is filed, and the reasoning behind any screening decision -- seemed to members as a reasonable gauge of the screening process to keep any such decisions accountable and non-arbitrary.

Investigation, Adjudication and Discipline

The Committee recommends that investigations are conducted by civilian investigators of the civilian review authority. "Civilian" means not now and never has been a sworn officer of the Minneapolis Police Department. The Committee recommends that adjudication, namely finding facts and conclusions drawn from the facts, be conducted by the civilian review authority. The standard of proof shall be "a preponderance of the evidence." When the civilian review authority has decided a case is ready for adjudication, an evidentiary hearing can be called by the board of directors and/or either parties in the case. The Committee recommends that after adjudication, the board of directors of the civilian review authority shall send to the chief of police the investigative report, the report of any evidentiary hearing that might have taken place, the adjudication report and, when complaints have been sustained, recommendations for discipline. The chief shall then make a disciplinary decision.

Investigation

The Committee recommends that investigations are conducted by civilian investigators of the civilian review authority. "Civilian" means not now and never has been a sworn officer of the Minneapolis Police Department.

Although there are several options for approaching investigation, the Committee essentially limited its consideration of who should conduct the investigations to just two options. Members supported either tandem investigation (teams of civilian-police investigators) or investigations conducted entirely by civilians. This was a very difficult decision for the Committee. The question of who should conduct investigations was the subject of numerous motions that failed to achieve the required eleven votes.

Before discussing the arguments, two points about which there was little disagreement seem important: first, judging from the options which were debated, the whole Committee seemed inclined to "civilianize" to some degree investigation from the outset. The debate was about how much.

Second, "civilian" did not mean never having worked as an investigator or never having been a police officer. It meant fundamentally not now a sworn officer of the Minneapolis Police Department. "Civilian" is an aegis not a qualifications or background question. The investigators work for an entity independent of and not under the supervision of the Minneapolis Police Department. The Committee was not advocating or requiring a "Chicago" approach to civilian review, namely taking and training persons who have never been investigators or law enforcement personnel.

The arguments for civilian investigators working for the civilian review authority were essentially threefold: First, the Internal Affairs Unit has a history of not investigating or thoroughly investigating citizen complaints. Second, officers could not be expected to thoroughly investigate other officers with whom they must later serve. Third, public confidence requires that investigation of complaints not be perceived as, in the words of one member, "the foxes guarding the chicken house."

The arguments in support of tandem investigation were essentially twofold: First, a member of the Minneapolis Police officer will be more knowledgeable about the department, its procedures, what witnesses to believe and which not. All of this will afford a better investigation. One member said that the Minneapolis officer knew "tricks that would take an outsider years to figure out."

Second, credibility is a two-way street. One member challenged the assumption that police investigators are not credible. He said, "I still don't know what is wrong with Minneapolis police officers conducting investigations of other officers. Judge Gomez told our Committee the investigations themselves were fine."

However, the majority of those arguing for tandem investigations indicated that while they agreed that there needs to be credibility with citizens there also needs to be credibility with police officers. In the words of a member, "credibility cuts both ways. Police officers must trust the process for it to be successful."

Another large portion of the debate about investigation was about excluding those who have in the past served on the Minneapolis Police Department and stipulating in an employment contract that the investigators not work for the department for a period of time. The debate was centered on the amount of distance required for credibility with the community. In the words of one member, "it's illogical to presume that officers who may at one time work with officers they're investigating will investigate them harshly."

Adjudication

The Committee recommends that adjudication, namely finding facts and conclusions drawn from the facts, be conducted by the civilian review authority. The standard of proof shall be "a preponderance of the evidence." When the civilian review authority has decided a case is ready for adjudication, an evidentiary hearing can be called by the board of directors and/or either parties in the case.

There was little discussion in the Committee deliberations on the question of who should adjudicate, what should be the standard of proof and the role of an evidentiary hearing.

Discipline

The Committee recommends that after adjudication, the board of directors of the civilian review authority shall send to the chief of police the investigative report, the report of any evidentiary hearing that might have taken place, the adjudication report and, when complaints have been sustained, recommendations for discipline. The chief shall then make a disciplinary decision.

The decision to instill the initial discipline decision in the Chief of Police was agreed to as part of a package proposal which also gave power of investigation to the independent civilian agency. There was a great deal of discussion about the issue of disciplinary authority before this decision was reached.

Although there were differing opinions on many issues before the Committee, the one that evoked the most passion was that of whether the chief of police or the civilian review authority should mete out discipline.

Those who spoke in favor of civilian control of discipline and against the chief holding the power to discipline officers had one major argument: the last several chiefs of police in Minneapolis have shown a complete unwillingness to discipline officers based upon a complaint of citizens and that it is totally lacking in credibility to assume that that would change. One member said "the reality of it is that the chief has not cut it with discipline for the last 25 years." Another member agreed, saying, "the chief has always had the power to discipline and has never done it." Still another member added, "the community has no faith in the present system. The chief should have as little power as possible."

Other members spoke as strongly against removing the power of discipline from the police chief. The essential argument was that of all of the "expert" speakers, namely organizational integrity and effectiveness requires the chief to control discipline. "The chief has to have the disciplinary power, otherwise you let him off the hook," said one. Another member said, "in order for law enforcement to work, there has to be the discipline and morale within the department for that to occur. If that authority to discipline is totally removed from the chief, there is no veto that the chief can use to keep discipline and to keep morale. Ultimately it's a matter of who's in charge. As I see it, without some authority in the chief the system does not work."

Many Committee members were in the middle between the above two positions. These members accepted the position of the police chief meting out discipline but constrained by either guidelines, recommendations, or an appeal to a higher authority. One member proposed the chief be mandated to make a disciplinary decision in accordance with the recommendation from the civilian review board. One member proposed the chief hold the disciplinary decision, but that such a decision be based upon a fixed schedule of disciplinary measures in which the civilian board participates in developing and that the board should make a non-binding recommendation. None of these was supported by the Committee.

Investigation, Adjudication and Discipline: Committee Conclusion

These three components have been discussed in this report together for two reasons: one, they are the guts (operational effectiveness) and heart (credibility) of an police conduct review mechanism and, two, it was considering them together that allowed the Committee to reach resolution.

The Committee discussions on investigation and discipline involved vociferous and passionate arguments about the most effective or most credible approach to investigation or who is or is not credible or essential to mete out discipline. There were attempts to achieve compromise within each of these two discussions. To no avail.

The resolution that passed the Committee was based upon the premise of "giving" one significant part of the process to citizens (investigations) and "giving" another to the police (discipline by chief of police).

The question of who shall investigate complaints and who shall have power to discipline officers were perceived by speakers at the Committee meetings and at the public hearings and by all Committee members as the two most important issues questions in designing a review model. These two components have the most power to define the system, both in terms of the public's perception and the system's operational strengths and weaknesses.

Werner Petterson, at the second meeting of the Committee, told the Committee that municipalities often take this path in making these two decisions regarding civilian review. "There seems to be a balance placed between investigation and discipline," Petterson said.

Appeal

The Committee recommends that when the chief does not follow the disciplinary recommendation of the civilian review board, review of the chief's decision shall automatically be made by the mayor. The mayor, then, in consultation with the Chief of Police and the civilian review authority, shall make the final disciplinary decision.

Many on the Committee saw an outside appeal to the chief of police's disciplinary decision as a way to have a check on the disciplinary decision, while not undermining the initial authority of the Chief of Police. Other members considered appeal from the chief's decision as a "fair thing to do."

Committee members were split however, as to who or what would comprise an appropriate appellate body. Requesting the appointment of a panel of three members of the Hennepin County Judiciary to hear appeals would be the best way to handle the process, a member argued, because it would "minimize the political element of the appeals decision." This member was particularly opposed to appeals going to the mayor.

In responding to the argument of those who favored the appeal to the mayor because the mayor can be held accountable, he felt that it was unlikely that the mayor would be voted out of office because of a decision regarding police discipline. "Minorities, gays, and the poor don't vote the mayor out of office". For this reason, and because "it seems illogical to limit the power of a blameless chief (only recently appointed) and give power to a blameful mayor," this member argued against giving the appeal decision to the Mayor of Minneapolis.

Another member argued against the mayor and for a panel of judges receiving appeals of discipline decisions. He said, "appeal should be to an independent person -- a non-partisan, non-biased, free-thinking person -- an impartial view will not be found in the mayor." He added, "we have had several years with the mayor in ultimate control (over the chief) of the police department. We need to know that when a decision is made it will be brought to court."

Other Committee members argued for the mayor making the appellate decision. One agreed that the mayor is a political figure who may make a political decision on a complaint, but said that far from undesirable, such a process is indeed necessary. "Discipline, unlike adjudication, is a political decision," the member said. "The discipline decision has to reflect the sense of the community."

Another member argued for the mayor hearing appeals, saying "ultimately the mayor is about as accountable a person as you get in this city. Yes, he is isolated to certain extent, but our system of government has designated the mayor as the final authority in this city." He said a three member panel of judges would be politically unaccountable body and that "the best decisions come out when they go to most visible political figure."

One member proposed that appeals go to an administrative law judge upon appeal of either party in the complaint. This member felt that such an appeal would be fairly rendered because the judging party would have nothing to gain from being biased toward either party. Another member pointed out that administrative law judges, "appointed by a bureaucrat in state government," would be inappropriate because they function only to take testimony and receive evidence and make recommendations for someone else to decide.

The chairman reminded the Committee that the police officer, through provisions of the City Charter, has recourse to the Civil Service Commission if he or she is unhappy with a discipline decision. There are also grievance procedures mandated by the agreement between the City and the Police Federation.

The Committee's recommendation appears to have been based upon concurrence with the view of one member that "the creation of the civilian review board creates a new political reality [for the mayor], by making the findings of fact public. The mayor has a hand in appointing the Chief of Police and the review board - his loyalties are equal."

Subpoena Power

The Committee recommends that the board of directors of the civilian review authority shall have subpoena power.

The Committee entertained a small amount of discussion on the subject of subpoena power. One supporter of the recommendation felt the language needed to be simple because "the civilian review board should be armed with as much power going in as is possible." This should be so, she argued, as the board may face "extenuating circumstances."

Some members opposed the recommendation, feeling it was too vague for such a vital issue as that of the ability of a civilian body to subpoena testimony and appearances of witnesses, police officers, and subjects of complaints against the police.

Mandatory Police Compliance

The Committee recommends that the Minneapolis Police Department and its officers are required to cooperate with the civilian police review authority investigations, subject to protecting the constitutional guarantees of police officers. The civilian police review authority, Minneapolis Police Department and Chief of Police shall develop procedures to implement Miranda and Garrity warnings, to insure cooperation and the protection of constitutional rights. The Minneapolis Police Department shall be required to turn over to the civilian police review authority all relevant documents pertaining to their investigation.

As a general opinion, the Committee felt that any realistic civilian review model could not leave cooperation with civilian review board investigations merely as a discretionary option for the department and individual officers. Most felt the turning over of police documents to the board, and testimony of officers to civilian investigators must be mandated in order for the board to have any real power. Members spent little time on the topic of requiring department records to be turned over to the board, but many concerns were raised when discussion turned to how to fairly require officers to give testimony to civilian investigators.

Some members expressed concern over allowing a civilian investigator to invoke a Garrity warning, wondering whether this use of the warning would be valid. The Chairman responded to that concern by stating that Garrity warnings would not be given by non-police personnel in this proposal. Instead, officers would be compelled to cooperate with the investigations of the civilian review authority under orders from their superiors. The police chief and other department supervisors, having developed with the civilian review authority policies and procedures for such cooperation would require such cooperation with the civilian review board and give appropriate Garrity warnings.

The language finally agreed to by the Committee is a policy statement with an understanding that certain practical procedures must be implemented by the civilian review authority and the police department. The Committee felt that Garrity warnings were vital to maintaining cooperative police-investigator relations, but not knowing whether such warnings could be given by civilian investigators, opted to recommend the continuance of as much of the current mandatory compliance techniques as is possible in a system of civilian investigation. The Committee is comfortable with the current internal affairs procedure for mandating testimony, and recommends that such a system continue with the civilian authority.

Confidentiality

Regarding the confidentiality of civilian review board documents and procedures, the Committee recommends: screening documents shall be confidential; complaints (except for summary data), investigative reports and the evidentiary hearings shall be confidential until the accused officer has exhausted his or her appellate rights or the complaint has been finally resolved; and adjudication reports, discipline recommendations, disciplinary decisions of the Chief of Police and appellate decisions of the Mayor shall be public.

In its discussions on the question of confidentiality, the Committee bypassed the questions surrounding the specific legal restrictions on opening up the complaint process. Instead the Committee concerned itself with the general policy questions of how to keep a civilian review process open and public, while protecting the privacy rights of the officer, and possibly the complainant. (The Chairman prepared a memorandum for the committee on the specific legal barriers to a more public form of civilian review. This memorandum can be found in the appendix at the back of this report.) The Committee debate on the topic of confidentiality can best be summed up with one member's description of the question, as "an example of trying to balance interests."

On the argument for opening up the complaint process to the public, one member said, "any secrecy breeds suspicion at best, at worst, tyranny." Another member said, "Everything should be opened except for frivolous complaints. The community has a right to know what is going on."

On the other side of the argument, one member questioned the impact of the media and opening up the process. "What about the TV cameras? How public are you going to make this? This Committee needs to recognize that evidentiary hearings are sensitive matters both for the officer and the community." One member discussed the legal implications of an open process, saying, "an open hearing might damage a civil case if new evidence emerges." Two other members said the complainant in some cases may not wish the complaint to be handled in the public eye. "An open hearing may not be the wish of the complainant. I don't know that a circus needs to be made in doing the service of the public." One member predicted witnesses would be reluctant to show up at a hearing or for an interview if their statement would be public. He said it is all the police department can do now to get witnesses to come in and testify.

The final language agreed to by the Committee attempts to balance the concern of the public for openness and the officer's privacy rights.

System Review

The Committee recommends that if in the adjudicating process of a complaint or complaints the board becomes aware of any patterns or practices within the police department about which it is concerned, the board of directors shall make a recommendation to the Chief of Police concerning such patterns and practice.

The prospect of the civilian review board holding jurisdiction to survey general practices of the entire police department initially surfaced during the Wayne Kerstetter's comments to the Committee. Kerstetter called system review one of the basic functions of the review process, describing its scope as one of "how well does the review system work, and, are the overall policies and practices of the department working appropriately."

A somewhat different perspective on the need for system review emerged at the public hearings, however. Marya Hart, an advocate at Waite House battered women's shelter felt a review board "should be empowered to examine broad patterns of misconduct -- for instance, police failure to file reports on domestic abuse calls -- and to prescribe procedural changes to remedy those problems." Also a written submission to the Committee from the Minnesota Coalition for Battered Women addressed this concern, writing, "[t]he citizen's complaint committee should review individual complaints, and should also have the power to form special committees to investigate class complaints, including those alleging unfair treatment of classes of citizens." Further, the board should have the power to sue the police department on behalf of classes affected by misconduct and brutality."

Finally, another citizen who wrote the Committee argued for system review, in light of what she saw as a department-wide problem with racism. Theresa Whitely of Minneapolis wrote, "I believe the problem is far more serious than just isolated incidents of police brutality and racism. I believe that members of the Minneapolis Police Department do not take crimes perpetrated against black people as seriously as they do those against white people. I also believe that racism and cronyism present in the department has been institutionalized and that it will take a great deal of effort to affect change. My suggestion to you as you form the purposes and structure of this Review Board is that you deal not only with isolated incidents of racism, discrimination, and brutality, but also with the broader picture of how to combat these things in general."

Several Committee members had qualms about the board having authority over the entire department's practices. One member called a specific proposal which would allow the board to recommend institutional remedies and if unimplemented would be appealed to the Mayor, "too vague." This member added "you're getting into the management of the department now." Another member agreed, saying "that does get us right into the police administration."

A member who spoke in favor of the motion called it "a very important point," saying that "there are certain communities that just don't get adequate response, which can amount to a form of discrimination or abuse. Our report is just not complete unless we address the issue that if you live on the North side, if you live in certain areas that are considered gay or lesbian you just don't get the same kind of service. Women assaulted in domestic abuse, they don't get the same kind of service, and to me that is discrimination." Another member added that "with Southeast Asians it's the whole group. They complain and the police don't respond. It's the communities."

The recommendation which passed the Committee allows the board of directors of the civilian review authority comment to the police chief on patterns and practices within the police department when such problems become apparent in the course of adjudication. The Committee supported this motion, which gives the board the right to recommend institutional remedies to the Chief, over a motion which failed which called for the board having right to appeal its recommendations to the Mayor if the Chief did not implement them. Members saw this as an effective way to look into a very real concern regarding police misconduct, without inappropriately interfering with the day-to-day management decision of the police department.

The Minneapolis Civil Rights Commission and Allegations of Discrimination by Police Officers or the Police Department

This Committee is in support of the City Council reinserting the language in the Civil Rights Commission Ordinance removed in 1971 (Title 7, Chapter 141.90 of the Minneapolis Code of Ordinances, Relating to Civil Rights: Administration and Enforcement) which provided the Civil Rights Commission with the authority to investigate all allegations of discrimination regardless of whether the incident could give rise to criminal prosecution. This Committee adds, however, that nothing in this recommendation or its implementation is meant or should be taken as an alternative to, or diminution of, the recommendations of this committee for an independent civilian review authority.

Several members spoke in favor of the recommendation. One member said she "favors the spirit, but feels the Committee should not handle this question." Other members disagreed with that statement, saying they felt comfortable with this Committee making such a recommendation.

There were Committee members opposed to the proposal itself. One member opposed the granting of the jurisdiction to the Commission calling it "duplication in government."

The language finally agreed to by Committee members reflects a support of the jurisdiction for the Civil Rights Commission over discrimination in police conduct while acknowledging members' concerns about the recommendation deflecting from the main recommendation of the Committee: the civilian review authority. One member was particularly concerned that this recommendation on discrimination not be seen as an alternative to the primary recommendation. Other members supported his concern, hence the language at the end of the recommendation.

VI. MINORITY REPORT SUBMITTED BY ALLEN BERRYMAN, GREG FAILOR & TERRENCE HAYES

The City Council charged the Civilian Review Board Working Committee with the task of coming up with a system of external review of the police department that would be workable, effective and fair. The model being proposed by the majority accomplishes none of these objectives. It neither gives the citizens an effective vehicle to pursue complaints nor the officers a system that protect their legitimate rights. It creates a work climate that would inhibit officers from being pro-active at a time when we face a rising crime rate, especially drug related crime. It takes away from the Chief of Police responsibilities that are properly his. Systems similar to the one being proposed have worked virtually nowhere that they have been tried in the United States, and we have no reason to believe they would be effective here.

Those with experience in the field of external review and much of the professional literature suggest a model that would include the following:

- (1) A choice of where a complaint might be filed: either with the Internal Affairs Unit or with the civilians who would take the complaint at a location other than the police department
- (2) A tandem investigation conducted by the Internal Affairs Units and by two or three other civilian investigators who would be independent of the police department
- (3) The Chief of Police would have disciplinary authority and responsibility
- (4) Both the complainant and the officer would have the right of appeal to an independent entity

Such a model would be far less cumbersome, far more effective, and far less expensive. It would have a better chance to produce the openness and accountability that is the object of external review, without creating a vast new bureaucratic structure.

VII. MINORITY REPORT SUBMITTED BY DOROTHY FLORENCE

I dissent relative to the inappropriateness of tandem investigation of allegations of police misconduct.

Based upon the evidence presented, both oral testimony during the public hearings and written recommendations of interested parties during the Working Committee's tenure, the major focus of the public's complaints centered on the nominal instances in which the current Internal Affairs Unit sustained a complaint and the failure of the Chief of Police to impose, what the public opined would be, an appropriate level of discipline.

Disposition of complaints and imposition of discipline against the police officer represent the major component which has contributed to community opposition to the current Internal Affairs Unit. Based upon this area of alleged malfeasance of the Internal Affairs Unit, it appears to the undersigned that the tandem investigation would not generate public opposition.

For example, whenever there is a citizen's complaint of alleged police misconduct resulting in physical injury to the complainant, the police department is in a superior position relative to the having in its possession the relevant evidence that is necessary to prove or disprove the veracity and visible scars or sought medical treatment of his or her physical injuries. However, when alleged misconduct involves oral statements, unless there is another witness present who is not a police officer, the ultimate disposition of the citizen's complaint may rest or fall based upon the credibility of the complainant versus the credibility of the accused officer and/or his companion-officer if the accused patrols as a team.

In order to encourage the free flow of evidence from the police department to the Civilian Review Board, tandem investigation encourages cooperation and production of relevant evidence with the ultimate objective of determining the veracity of speciousness of an allegation of a complainant.

Finally, the police department's level of trust in the investigatory process, based upon the presence of another police officer participating and cooperating with the Civilian Review Board, also would encourage the free flow and exchange of evidence. Likewise, the public's confidence in the investigation of a complaint would not be undermined merely because a police officer, concomitantly with civilian investigators, may have participated in the investigation of a complaint. The presence of a majority of civilian investigators on a team of investigators ensures credibility and authenticity of the evidence.

Therefore, it would appear that as long as the investigation of a complaint contained a team of investigators, where civilians exceed the number of police investigators, the public would have confidence in the process.

MINORITY REPORT SUBMITTED BY CAROL ARTHUR, SUNTHI PAUL
CHOOKIATSIRICHAI, LEWIS FREEMAN, BILL GREEN, HERMAN MILLIGAN
& DIANE SADRAVI

We support the final document of the Working Group with two exceptions.

1. 5 spaces on the Civilian Review Board be reserved for persons of color and/or Gay or Lesbian persons.
2. The Civilian Review Board must make recommendations concerning practices and procedures to the Police Chief. If the Police Chief fails to make corrections, an automatic appeal goes to the Mayor. A final decision is to be made by the Mayor in consultation with the Civilian Review Board and the Police Chief.

EXHIBIT 11

NYCLU

**POLICE ABUSE:
THE NEED FOR
CIVILIAN INVESTIGATION
AND OVERSIGHT**

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NEW YORK CIVIL LIBERTIES UNION

June 1990

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CHAPTER 5 -- THE EXAMPLE OF OTHER CITIES

There are two models New York City can follow in plotting a more credible and potentially more effective system for investigating citizen complaints of abuse. The first is the varied systems of citizen review that an estimated 70 towns and cities have developed in the past 20 years. The second is the highly developed system for investigating corruption, which the Police Department implemented after the Knapp Commission report.

In analyzing what has been effective in systems with a heavily civilian bent, local authorities would do well to consider the reflections of a CCRB study of various complaint systems that was issued in January 1986. The study reported that, "We found in our discussions with civilian agency heads that the more successful relationships between civilian agency and police department were predicated on enabling legislation which gave the independent agency subpoena power and access to departmental records, coupled with a strong, supportive municipal government which backed the agency up and listened to its recommendations. Given the fact that the agency was there to stay, the police department leadership was more likely to accept its presence and develop a working relationship. Of course, the attitudes of leadership on both sides was critically important, and good communication with as little preconceived hostility as possible facilitated a successful partnership."²⁴

Among the cities with some component of civilian-controlled review are Washington, San Francisco, Cincinnati, Detroit, Atlanta, Toronto, and Milwaukee. The forms can be very different, due to variations in local government and the way the issue was framed. Certain broad trends account for the spread of civilian oversight. Many observers point to a suspicion of government and a feeling for the need for greater oversight growing during the Watergate scandal and again during the Iran-Contra scandal. This led to the approval of civilian-oriented reform even in a conservative city such as San Diego, where voters approved a mild form of civilian review in a referendum in November 1988.⁸⁵ Second, the complexion of many cities has changed dramatically since the New York vote. Many, including New York, are made up in the majority of people of color, the populations generally conceded to be the victims of the most abusive behavior on the part of heavily white police departments. Third, population trends notwithstanding, the issue in many cities has risen somewhat beyond the stark racial polarization that characterized past campaigns. Increasingly, the concept has emerged as a simple issue of good government. In this formulation, the monitoring of governmental agencies is seen as an inherent good, one that embodies the intentions of the framers of the Constitution. Proponents of civilian review are apt to quote James Madison from The Federalist Papers: "You must first enable the government to control the governed; and in the next place oblige it to control itself."⁸⁶

These strands have come together in many cities that have surpassed New York in the extent of their use of civilian controlled review boards. Often they have civilian-controlled boards that recommend findings to a police commissioner. Sometimes civilian investigatory staffs replaced investigations units made up of police. On occasion, the ultimate decision in abuse and brutality cases resides with boards with general oversight of police departments. There seems to be a consensus, as indicated in the CCRB report, that for a review process to work, it needs the active cooperation of the city administration and its police hierarchy, motivation for police officers to testify candidly, and ongoing support from members of the public.

REFORMS ELSEWHERE

Although in some cities civilian reform has been instituted by referendum, most often it has come into existence by mayoral directive or city council action, almost always following a high profile incident of brutality. In San Francisco, the current version of the Office of Citizen Complaint was established after a friend of the mayor was beaten by police at a post-Super Bowl party in 1982. In Chicago, police in the department's citizen complaints office were replaced by civilian administrators and investigators after a black dentist complained he was roughed up while being stopped for not having a light over his rear license plate. The dentist was a close friend of Rep. Ralph H. Metcalfe (D-Ill.), who conducted hearings on alleged police abuse that

provoked a flood of stories, some of them from black police officers.⁸⁷ In Cincinnati, it was a flurry of shooting incidents that ended in the deaths of four black residents and four white police officers that led, in 1979, to the establishment by the City Council of an Office of Municipal Investigation, which probes complaints against police and other municipal employees and reports to the city manager.⁸⁸

Each city has dealt with key issues in different ways. Those issues include:

(1) Who processes and investigates complaints? Because of a reluctance to rely on investigations by police officers of fellow officers, several cities have opted for civilian investigative units. In San Francisco, for example, civilians investigate all complaints. They are paid considerably more than the civilian investigators in New York, starting at \$39,000, as much as \$14,000 higher than salary schedules permit for their New York counterparts.⁸⁹ In part as a result, their ranks include lawyers, former private investigators, and two or three former police officers who worked for departments other than San Francisco's. In Chicago, the entire unit is made up of civilians,⁹⁰ although over the years there has been controversy about the links between many of these civilians and the department. In Cincinnati, only non-police officers in the Office of Municipal Investigations probe complaints against police.⁹¹ In other cities, such as Detroit, there is a heavy mix of police and civilian investigators.

Some cities, such as Milwaukee, Berkeley, and Toronto, have various overlapping structures. A citizen who files a complaint has a choice in the first two cities of whether he or she wants it investigated by an internal police unit or an external civilian unit.⁹² In Toronto, a team of eight civilians reports to an independent public complaint commissioner, who can review and reinvestigate any internal police investigation that leads to an action by the police commissioner that is unsatisfying to a complainant.⁹³ Numerous other civilian-controlled agencies, such as those in Dade County, Fla., Atlanta, New Orleans, and Dallas, rely essentially on police investigators for information, much in the manner of New York.⁹⁴

(2) Who should pass judgment on civilian complaints? The growing number of civilian-controlled review agencies are constituted in a wide variety of ways. In Atlanta, the Civilian Review Board is made up of 27 civilians who break into five-person hearing boards headed by a chair appointed by the mayor.⁹⁵ In other cities, the number of members on review boards is usually less than a dozen, with five in Milwaukee,⁹⁶ for example, and seven in Washington, D.C.⁹⁷ They are usually appointed by the mayor with the approval of the city council. Sometimes, they will be selected from lists approved by blue-chip screening panels or submitted by widely respected community agencies. In Dade County, for example, where an Independent Review Panel has jurisdiction over 19,000 county employees, including police, nominees are submitted to the County Commission by such agencies

as the Community Relations Board, Community Action agency, Dade County Bar Association, Dade County League of Women Voters, Dade County Association of Police Chiefs, and the county manager, who selects a member from his staff.⁹⁸

As important as the membership of the board is its placement in the bureaucratic structure. Many boards, such as New York's, are placed within the structure of the Police Department. The rationale often is that since the police commissioner is ultimately responsible for disciplining his force, he should have control over the mechanism that advises him. It is also thought that having civilians involved in the internal workings of the investigative process encourages rigor and impartiality. Chicago also has such a system. The problems with it, however, are manifold. The two greatest are issues of public credibility and true independence from the police. In Chicago, the number of relatives of Chicago police officers, including the wife of a former police superintendent, who served as agency staff, threw the independence issue into prominence.

Among the agencies established outside departments are those in such diverse communities as Detroit, Dade County, Cincinnati, New Orleans, and Berkeley. They are often staffed with their own teams of investigators and often have jurisdiction beyond police to the entire body of municipal workers. Their budgets are independent of the department's. Frequently they are empowered to recommend disposition and punishment to the police commissioner.⁹⁹

The ability to recommend appropriate discipline is a particularly crucial one, which Commissioner Ward attempted to remove from the board in New York City, setting off criticism among board members and muted criticism in the last board report.

Beyond recommending findings and penalties, some boards have the power to submit their findings to authorities above the highest ranking uniformed police officer. In Atlanta, findings are made to the mayor.¹⁰⁰ In San Francisco, if the police chief makes a determination at variance with the recommendation from the Office of Citizen Complaints, the case can be appealed to a five-member police commission, which presides over the department in much the same manner as the Board of Education presides over schools in New York.¹⁰¹ In Berkeley, if a citizen opts to have a complaint investigated by the Police Review Commission, recommendations, after public hearings, are submitted not to the police chief but to the city manager.¹⁰²

In Toronto, a citizen dissatisfied with the disposition of a case by the police chief can appeal the decision to the Office of Police Complaint Commissioner, which after conducting its own investigation, can order a public hearing conducted by a 24-person board of inquiry. Members of the board are appointed a third each by the Ontario attorney general and solicitor general, the Toronto Metropolitan Council, and the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association. The board observes a higher standard of proof than other civilian agencies -- beyond a reasonable doubt -- and can

administer its own discipline, with the maximum penalty being dismissal from the force. The board's decisions can be appealed to the courts.¹⁰³

In addition to acting on individual complaints, many of these boards, including the last three mentioned, are empowered to, and do, issue regular reports on police activity and policy, recommending changes in procedure.

These active boards are considered the most advanced in terms of civilian monitoring of police, but they, too, encounter difficulties that sometimes stand in the way of optimal performance. To work, they need cooperation from the police and from the citizenry.

(3) How can cooperation from all parties be encouraged? Police, in many cases understandably, have been wary of cooperation with civilian boards. In their own self-interest, in New York and other cities, they have a mechanism that protects them from sanctions in a way that appropriate procedural safeguards does not. This is the code of silence, which, as long as it holds, insures that the witnesses who most often can furnish incriminating information, i.e., fellow officers, remain mute. For the public, the issue of involvement is different. Police review, after a highly publicized and controversial use of force by officers, often becomes the issue of the moment in the city. But particularly in minority communities, where concerns over jobs, housing, and social services are everpresent, the moment often fades. The most highly structured boards have on

occasion simply slipped from existence because of a diminution of public interest.

Resistance to civilian boards has proven to be enormous among police officers, but in some cities there have been ingenious attempts to break through the wall. Berkeley stands out as an example. In the mid-'70s it negotiated the cooperation of officers in the review process in exchange for labor benefits. The adjoining City of Oakland negotiated a more limited agreement of the same sort. Subpoena powers have frequently proven to be useful where negotiated agreement has not come to pass.

Authorities also point to time and familiarity as being the great levelers in promoting cooperation of varying degrees among officers. The boards almost without exception are not composed of the sorts of hacks or anti-police bigots that the police unions initially envision. This shows in results of civilian review boards. Although comparative data is imprecise and problematic, in many situations it appears that the civilian review boards are no more severe in dealing with police than departmental boards, although their credibility among civilians is usually higher, according to most authorities.

Furthermore, civilian boards often provide procedural safeguards to officers that are usually absent from departmental mechanisms. In most well-run boards, for example, there is a serious effort to reduce the numbers of unsubstantiated cases. If a case can't be substantiated, the officer leaves the process with an unblemished record. There are no notations in his file,

no presumptions of guilt unless the board determines that a standard of proof has been met.

Gaining the cooperation and support of the public is also critically important. Frequently boards face what their advocates call a sort of "postpartum" resistance following their births. Activists who fought for their creation move on to other battles. Police unions continue to fight this one. The boards sometimes fade from public view and lose a number of bureaucratic battles that lead to a lessening of their power. Detroit is one city that has tried to guard against this by requiring that its five-person Board of Civilian Police Commissioners hold weekly public meetings and conduct at least one of those meetings monthly at a neighborhood location. The board has jurisdiction over civilian complaints as part of its supervisory authority over the department.

Along with a sense of impartiality and fairness, a credible record of investigation is what in the long run engenders community support. Again, information is fragmentary, but in the most widely cited survey of six review mechanisms (Douglas Perez 1978), the Berkeley civilian board was the only one deemed substantially satisfactory by a significant number of complainants whose claims were rejected. Overall, it was found to be impartial by nearly 65% of complainants, thorough by more than 85% and fair by 73%.¹⁰⁴ The Berkeley Police Department's parallel apparatus was deemed impartial by just under 30% of complainants, thorough by 47% and fair by little more than 35%.¹⁰⁵

The all-police system then in neighboring Oakland was deemed impartial by slightly less than 10% of complainants, thorough by a little more than 23%, and fair by 11.5%.¹⁰⁶ In Kansas City, which used a mix of civilians and police in investigations, as New York does today, the results were worse than they were for the all-police board in Berkeley (18%, 22%, and 16% respectively).¹⁰⁷

This broad, somewhat impressionistic overview does not touch on all issues involving civilian review. Among the topics that involve major policy decisions are the conciliation of cases that can be better served in this manner than through a quasi-judicial process, the level of proof needed for substantiation, procedures for appointments to the board, a board's relationship to the full disciplinary process, and the process of appeal of its judgments. The overview does not mean to suggest that these boards are panaceas or that many of them have not become enmeshed in bitter political battles of their own. This, given the subject matter of these boards, is an inevitability, and it can be argued that many of the boards that receive only sporadic public attention, such as New York's, are the ones that are less successful.

BRUTALITY VS. CORRUPTION

The city can also look to the vigor with which the Police Department has addressed corruption as a model for how to grapple with police abuse and brutality. The anti-corruption effort is a national model. In the most direct way, it was the result of

Frank Serpico's breaking of the blue wall of silence and of the Knapp Commission investigation that ensued. Coming out of this was the acknowledgement that corruption was not the vice of a few bad apples, but systemic. Presently, 420 sworn officers working with the Internal Affairs Division and the Field Internal Affairs Units are engaged in the task of routing out corruption. Twenty years after Serpico first went to The New York Times with his story, the common belief is that despite drug and corruption problems involving individuals and perhaps small isolated rings, systemic, department-wide corruption has not returned to a bureaucracy, which, before this, had been scarred by scandal on a 20-year cycle that seemed to function like clockwork.

By contrast, the chair of the Civilian Complaint Review Board recently described brutality and abuse as limited to a few "bad apples." The investigative force battling abuse and brutality is roughly a quarter the size of the one geared toward corruption. And nobody can say with authority how bad a problem abusive behavior is in the Police Department. While the anecdotal information -- the outpourings and comments at various public hearings, the talk on the street in many minority neighborhoods -- would indicate the problem is large, the statistical base of complaints established over two decades by the CCRB is simply too small, too subject to fluctuation, and too unmoored from a direct relationship with actual instances of abuse to provide insight.

The question is whether the time has come to deal with brutality in as serious a way as the Police Department deals with corruption.

CHAPTER 6: RECOMMENDATIONS

An effective Civilian Complaint Review Board must be independent, powerful, and worthy of public trust. It should be able to investigate charges of police abuse as exhaustively as the Police Department is expected to investigate criminal acts of all kinds and to treat police brutality as seriously as the department treats police corruption.

While the police commissioner should maintain broad authority in determining discipline, the CCRB should be expected to comment on and criticize police policy and action and, in extraordinary circumstances, to overrule the police commissioner.

To that end, we believe the CCRB should:

(1) be established outside the Police Department and made up of 12 civilians who are representative of the city's population. The mayor should appoint three members and designate one as the chair; the president of the City Council and the Comptroller should both appoint two representatives each; the City Council majority leader should appoint two members and the City Council minority leader should appoint one member. The remaining two members of the CCRB should be the New York City criminal justice coordinator and the chair of the City's Commission on Human Rights. This would make the CCRB responsive to both elected officials and the public. Chairing the CCRB should be a full-time job with pay comparable to that of other

city agency heads. The chair should be assisted by a full-time general counsel to lead the staff of investigators;

(2) have investigators who are civilians with no allegiances to the Police Department. Its investigators should be professionals, paid on a higher scale and be able to compete for career track promotions. This would help to attract and retain an experienced and talented staff;

(3) have expanded jurisdiction that includes police or peace officers employed by any city or quasi-city agency. This should include, but not be limited to, the city's Police Department, Transit Authority Police, Housing Authority Police, Sanitation Police, and Health and Hospitals Corporation Police;

(4) operate with the understanding that great power over discipline remains with the police commissioner and his counterparts at the other law enforcement agencies in the city, but that, in exceptional cases, it could overrule them, and impose sanctions on officers. A suggested way of implementing this is detailed below;

(5) be given the power to issue subpoenas and requisition copies of reports related to the alleged acts of misconduct from law enforcement agencies. These tools are necessary to develop effective investigations of acts allegedly involving personnel from law enforcement agencies;

(6) hold regular public meetings and engage in education and media campaigns to spread awareness of its existence and the rights of citizens in encounters with the police. The CCRB

should (A) hold open, public meetings in each borough twice a year; (B) publish monthly reports in the City Record as well as in the department orders of each law enforcement agency containing the results of all cases in which sanctions were approved; and (C) issue quarterly reports on the total number of complaints filed in each borough and recent dispositions. The report should include the number of cases recommended for sanctions by a CCRB panel, an appropriate law enforcement agency head, the full CCRB and how many complaints were dismissed;

(7) have the authority to investigate, hold hearings, and issue reports on patterns and practices of police abuse. Beyond disciplining individual cases of police brutality and abuse of power, the CCRB would track systemic patterns of abuses and hold departments and commissioners accountable for their actions or inactions;

(8) maintain procedural safeguards to protect the rights of civilians and police officers. This would encourage both to have more faith in the proceedings. Detailed operating procedures for the CCRB and its investigators should include a provision excluding from an officer's personnel file at the Police Department or other law enforcement agency information about a case against him or her that was not substantiated.

Here is a how a new procedure could work.

All complaints against law enforcement officers should be referred to the CCRB. They could be made in writing or to a 24-hour telephone hotline that would be publicized extensively.

Complaints should then be assigned to investigative teams. Their findings of fact and recommendations for action should go to a panel of three CCRB members.

The panel would consider the investigators' report and make its own recommendation to the full board.

The full board, considering the panel's and investigatory team's reports, would make recommendations to the police commissioner or appropriate law enforcement agency head or to the district attorney.

The panel and board could also reject the staff's findings and dismiss the complaint before it is forwarded to the police commissioner or other law enforcement agency head.

Law enforcement agency commissioners could either accept or reject the CCRB's recommendations. Previous police commissioners have frequently disregarded the board's recommendations, and officers involved in brutality or abuse cases have received the equivalent of a slap on the wrist. To convince both the commissioners and the public that police brutality will be taken seriously, we recommend that the CCRB have the power to override the rejection of its recommendations by a commissioner in extreme situations.

When a commissioner discards the CCRB recommendations, the matter should be returned to the board for review. The full 12-member CCRB, would need a 2/3 vote, to sustain its original disciplinary recommendation over the commissioner's or other law enforcement agency head's veto. If the override is effected, the

case would go to an administrative law judge for a formal hearing. If the 2/3 vote is not obtained, the decision of the police commissioner or other law enforcement agency head would become effective.

Of course, if a commissioner accepts the CCRB recommendations, the officer also should be entitled to a hearing before an administrative law judge and to be represented by counsel.

The administrative law judge should be empowered to hear evidence, make formal findings and recommend sanctions to the appropriate law enforcement agency head. The administrative law judge should apply a "clear and convincing" standard of proof.

If the findings of the administrative law judge are ignored by the head of a law enforcement agency, the case could be reconsidered by the entire CCRB. If 3/4 of the CCRB's members vote to restore the sanctions, the agency head would be overruled and the sanctions imposed.

The sanctions could include fine, reprimand, suspension and dismissal.

If the case against an officer is dismissed or the officer exonerated, the complaint should be expunged from his employment file at the Police Department or other law enforcement agency.

Finally, we recommend that citizens engage^{ing} in demonstrations, picketing or other public activities, ~~and~~ bring videotape cameras to those events and activities. More than anything else, it was the presence of such cameras in the crowds

of citizens at Tompkins Square Park that ~~the~~ forced city officials to acknowledge ^{publicly} ~~publicly~~ the police misconduct, and has raised anew the issue of effectively monitoring the police in New York City.

NEW YORK CIVIL LIBERTIES UNION

June 1990

N.B. The NYCLU gratefully acknowledges the efforts of the following persons in connection with the preparation of this report: Donna Lieberman, Esq., Arthur Eisenberg, Esq., Eve Cary, Esq., Fran Bisagna, Steven L. Glauberman, Esq., Earl Ward, Esq., Carmen Santiago, Georgette Todd, Tom Tyburski, Jim Drobnick, Massimo De Rossi, William Futornick, Amy Held, Kathleen Kermian, Geoffrey Simon, S. Wyeth McAdam, Sarah Margolies, Clayton Patterson and Paul Garrin.

77. Ibid., p. 12. See also p. 29.
78. Ibid., p. 9.
79. In the insightful words of a previous CCRB document setting forth a comparison of different civilian review systems completed in 1986, the board wrote: "A decrease in complaints received can mean misconduct is decreasing, or that the agency is losing credibility and no one is seeking redress there, or that complainants are being prevented from filing complaints." Nationwide Survey of Civilian Complaint Systems, January 1986, New York City Police Department Civilian Complaint Review Board, p. 36 ("1986 CCRB Nationwide Survey").
80. 1987-1989 CCRB Report, p. 17.
81. See note 10.
82. See Appendix D.
83. Meanwhile, police opened a second investigation concerning Garrin. With his potentially incriminating video shown on many television stations, Garrin was one of the most prominent of the Tompkins Square victims. On the day after the riot, he received two anonymous threatening phone calls, and the day after that another two. He recalls the language in some of them: "You better get the fuck away -- they're gonna get you." "Paul, you stupid motherfucker, you got the whole Police Department against you." "You can run, but you can't hide."
- He says he reported the calls to the CCRB and was later interviewed by the Internal Affairs Department and the FBI. "That's the last I heard about it," he said.
- A class action lawsuit has been filed on behalf of Paul Garrin. In addition to seeking damages for Garrin, the suit seeks to end a longstanding pattern of police abuse, namely, interference with persons photographing and otherwise recording police actions. In addition to Garrin, at least three other photographers were beaten by the police at Tompkins Square Park area on August 6-7, 1988.
84. 1986 CCRB Nationwide Survey, p. 29.
85. Two versions of a proposal of a civilian review board were presented to voters in San Diego. One form called for a strong civilian-oriented body and the other called for a milder body. Although voters approved both versions, the milder version was implemented because it received more votes.

86. Quoted in "Civilian Oversight of Policing -- United States of America," a paper prepared by Werner E. Petterson ("Petterson").
87. Ibid., pp. 4-6.
88. U.S. Department of Justice, Community Relations Service, Compendium of Civilian Oversight Agencies -- Civilian Oversight of Police, prepared by Werner E. Petterson, Conciliator ("Compendium"), pp. 13-14.
89. Based on information obtained from San Francisco Office of Citizen Complaints, Fiscal Year 1990-1991, p. 3.
90. Compendium, p. 3.
91. Ibid., p. 6.
92. Ibid., pp. 13-14.
93. Ibid.
94. Ibid., pp. 8, 21, 22, and 23.
95. Ibid., p. 23.
96. Petterson, p. 43.
97. Ibid.
98. Compendium, p. 8.
99. Ibid., pp. 3, 4, 8 and 9.
100. Ibid., p. 23.
101. Ibid., p. 16.
102. Ibid., p. 10.
103. Ibid., p. 14.
104. Wayne A. Kerstetter, "Who Disciplines the Police? Who Should?" in Police Leadership in America: Crisis Opportunity, edited by William A. Geller ("Kerstetter"), p. 162. Percentages are derived from survey done by Douglas Perez in 1978.
105. Ibid., p. 164.
106. Ibid.

107. Ibid.

EXHIBIT 12

On The Line

Police Brutality and its Remedies

A Public Policy Report prepared by:

American Civil Liberties Union

April 1991

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Preface

The videotaped bludgeoning of Rodney King by several Los Angeles police officers on March 3, 1991 shocked and appalled the nation. But even as the City of Los Angeles endeavors to resolve the case and heal the wounds caused by that incident, an even more troubling reality has come into focus: The events in Los Angeles were not, and are not, singular isolated events for that city or for the nation. It is impossible to know how frequently such savagery occurs, but it is sobering to remember that but for the fortuitous presence of a video camera, we would not have known about this incident either. Certainly, police mistreatment of civilians happens too often and in many cities is commonplace.

Police brutality can never be condoned, but it can be explained. In one sense it reflects the heightened sense of violence -- real or imagined -- that now permeates our inner cities. No group is more aware of that fact than the police themselves. From chiefs of police to the cop on the beat, the streets they patrol are perceived by them as a combat zone, fraught with thugs and pushers carrying the most lethal of weapons. The political rhetoric about a "war" on drugs and a "war" on crime has helped turn the police into soldiers -- not civil servants or guardians of community order --making them sometimes more aggressive and forceful than they have a right to be in the pursuit of criminals and suspects.

Many dedicated law enforcement officers have worked for years to explore the reasons police go beyond the bounds of their own professional guidelines. They have concluded that responsibility lies with the individual police officer for ensuring that laws are enforced appropriately; but they know, too, that others in the chain of command, including and especially the chief of police, set the tone and provide the leadership for ensuring that the police adhere to proper procedures.

Los Angeles Police Chief Darryl Gates, who initially downplayed the King incident, stands in stark contrast to the response of many of his colleagues in many other cities. Some police chiefs have rid their police forces of officers who have used excessive force and dismissed those insensitive to racial minorities, the group most often the victims of police brutality. Others have created outreach programs to troubled communities and rejected the most insidious tools of police brutality -- stun guns, for example -- from their arsenals.

Thanks to this effort on the part of the Police Education and Research Foundation (PERF) and others, some of the nation's police forces have strived for police professionalization--a police force not only competent to enforce the law, but one skilled to accommodate community needs, respect individual rights, and work in partnership with other municipal agencies to ensure that law and order do not come at the expense of civil liberties or the public trust.

Still, as events in Los Angeles during March 1991 suggest, police brutality can become an all too common consequence of the way in which police officers in this country conduct their business. And too typically, there are unsatisfactory procedures to resolve such complaints fairly and credibly.

The result in many communities has been a deep distrust of the police officer on the beat and a lack of credibility of that officer's commanders. That credibility gap is most profound in the minority community, but indeed every segment of the community suffers when the public loses confidence in the very people to whom they should be looking to for protection.

The American Civil Liberties Union, which has monitored police behavior for many decades

and litigated hundreds of police brutality cases, believes that the recent events in Los Angeles provide the nation with an opportunity to put in place meaningful reforms that will create safeguards against police brutality while assisting the police to do their job better. This report outlines the causes and consequences of the police brutality problem, and proposes a series of remedies for Congress, local governments and police forces to adopt to stop police abuse in the community.

The incident in Los Angeles last month -- as tragic as it is -- may also provide an opportunity to bring meaningful reform at the local level and in Washington that will preempt other incidents from occurring. The call for reform comes not a moment too soon -- for the King matter exposed a crisis simmering in hundreds of communities. With the public eye turned toward that crisis, the reputation of every police force is now at stake, and the ability of the nation to ensure effective and humane law enforcement is on the line.

Ira Glasser
Executive Director

Case Examples

The ACLU routinely investigates complaints and represents citizens who believe they are the victims of police brutality, harassment and discrimination. On the average, ACLU affiliate offices around the country receive two to three complaints of police misconduct each week. Obviously, some are more serious than others, but many have rivaled the King incident for the severity of abuse and the conspiracy on the part of participating officers to keep that abuse hidden from the public. In many of these cases, the ACLU evaluates the charges and in the most serious allegations, brings the complainant together with private attorneys who assist in seeking financial damages on behalf of the plaintiff.

What follows is a sampling of the kinds of cases brought to the attention of the ACLU during recent months. The list is by no means exhaustive; rather, these cases are emblematic of the wide variety of incidents nationwide that have raised public concern about the procedures of local police.

LAS VEGAS, NV -- During the summer of 1990, the Las Vegas police entered the residence of Charles Bush, a casino employee and former basketball star, to search for drugs. The officers, who did not have a warrant, used a key obtained during a previous arrest of his girlfriend, a common procedure used by the force. Bush was asleep in his bed. When he was roused at gunpoint, he tackled one of the officers. He was then subdued with a chokehold and suffocated.

One officer was fined and two others were disciplined. Litigation against the police department is being contemplated.

SAN FRANCISCO, CA -- In 1988, Dolores Huerta, then a 58-year-old organizer for the United Farmworkers, was participating in a political rally outside the Westin St. Francis Hotel

when the police tactical squad moved into the crowd to break up the demonstration. Huerta, who is five-feet tall and weighs less than 100 pounds, was pummeled repeatedly by a squad officer and beaten with a nightstick. She suffered six broken ribs, a pulverized spleen and other injuries -- all of which was captured on videotape.

Huerta successfully sued the police department. However, the police commission refused to hold an investigatory hearing and the officer involved was not disciplined.

HOUSTON, TX -- In 1990, Houston police stopped Byron Gillum, a black security guard travelling home after work late one night on the ground that his late model car was a "suspicious" vehicle. The white officer, Scott Tschirhart, radioed to check his license, and finding no outstanding warrants, looked inside Gillum's car and spotted the service revolver he used at his job. The officer ordered Gillum out of the car and, alleging that he went for the gun, Tschirhart opened fire on Gillum, emptying his revolver and killing Gillum at the scene.

This was the third time that officer Tschirhart had been involved in a fatal shooting in eight short years on the force. Police Chief Lee Brown (now chief of the New York Police), acted swiftly to dismiss the officer, a decision supported by Houston Mayor Kathy Whitmire. However, successive grand juries have thus far failed to indict Tschirhart, who wants to rejoin the Houston Police force.

TEANECK, NJ -- Last April 1990, Phillip Pannell, a black teenager and his friends were playing in a public park when two Teaneck officers arrived, summoned by an anonymous call alleging the youngsters had a gun. Pannell, his arms over his head, was shot by one of the officers,

who later said he thought the youth was reaching for a gun.

A grand jury exonerated the officer, based on a falsified coroner's report by the Bergen County Medical Examiner. New Jersey Attorney General Robert Del Tufo, however, convened a second grand jury which has indicted the police officer on charges of reckless manslaughter.

PALM BEACH, FL -- In November 1990, eight undercover police officers arrested a suspected drug dealer for "trespassing," handcuffed him, tied him to the bed of a truck, and took him miles away to an abandoned dockyard, where he was roughed up and threatened. No drugs were found.

The police officers involved were later found to have falsified police reports about the incident, but no disciplinary action was taken.

KANSAS CITY, MO -- In another case captured on videotape, the Kansas City Police in the fall of 1990 pulled a man from his truck after an hour-long car chase and repeatedly kicked and beat him with a slapper, a small weighted club designed to inflict severe blows. A television camera crew appeared at the scene and after they began filming the beating stopped.

Acting immediately, Police Chief Steven Bishop fired two officers and banned permanently the use of slappers by the force.

NEW YORK, NY -- In a city where police brutality complaints are common, New York City Police went on a rampage in August 1988 after a curfew was imposed on a heavily used city park. Fifty-two persons, most of them innocent bystanders, were beaten so severely by the police that they required medical attention.

Although much of this was captured by stark videotape evidence by neighborhood video artists and later shown on nightly news shows, the Civilian Complaint Review Board disciplined very few of the 400 officers present and not a single police officer was criminally convicted.

ATLANTA, GA -- On March 12, 1991, a little more than a week after the Rodney King beating, law enforcement officers in Georgia were involved in two highly-charged incidents. In the first, Clayton County and City of Atlanta officers stopped a motorist after a high-speed chase. Elic James Liles was dragged from the car and beaten by a Clayton County officer who eventually had to be restrained by other police from beating the suspect. The officer was fired from the force.

That same evening, two black youths were pursued in a high-speed chase through five counties by law enforcement officers. During the subsequent confrontation, 15-year-old Vincent Turner was killed and Claude Burns, 19, was seriously injured. No weapon was found in the car. The Justice Department is investigating both incidents.

PRINCE GEORGE'S COUNTY, MD -- On March 25, 1990, a car driven by Michael Vaughan was pulled over by three county police cars. Vaughan and passenger Michael Adams stepped out of the car as requested after Vaughan produced his driver's license and registration. Even though there was no evidence of wrongdoing, both men were searched. Police seized Vaughan's pager used on his job along with \$232 in cash. Both were beaten with flashlights, Vaughan's head was repeatedly shoved into the trunk of a police car, and Adams was choked. After a police dog searched their car and found no contraband, the two men were set free with no charges filed against them. Four days later the two were pulled over again. After a search where again nothing illegal was found, the two were released without charges. On April 23, 1990, the two were again illegally stopped and searched. Again no contraband was found and the two were released. An internal police investigation cleared the officers of any wrongdoing.

What explains why some cities have many such incidents and some very few? The next section seeks to provide an answer.

The Local Response

"It can't happen here, it can't happen here," has been the familiar refrain of officials around the country in the wake of the shocking video of the Rodney King beating in Los Angeles. It's tempting to think that there is something fundamentally different about the police force in Los Angeles that allowed this incident to occur.

Yet while police departments vary in practices, make-up and attitude from locality to locality and from state to state, there are common themes that need to be addressed in every community before the public is asked to believe that brutality and abuse are not problems in their own local police agency.

Police abuse has neither a single cause nor a single cure. It's not "just" an issue of racism or a lack of training or poor leadership, although all of these can be extremely important factors. If the focus is on one of these issues to the exclusion of the rest, the impact on the overall problem will be minimal. Only a comprehensive approach addressing at least the following five key areas can bring lasting results.

The common strain underlying all of these areas is the need for greater openness on issues of local police misconduct. Too often walls of secrecy hide not only incidents of brutality but also inadequate responses to these incidents. The public has a right to be shown how thoroughly allegations of misconduct are investigated. Controversial or dangerous tactics should be publicly debated and evaluated instead of left just to police insiders. Since taxpayers often must cover the tab for police misconduct in the form of litigation settlements and awards, they should have oversight and control over systems that can effectively manage the risk of liability while providing for safer, more professional and more effective policing. Finally, the isolation pervasive in the internal culture of many police departments must be

broken down in order to minimize the "us vs. them" attitude that complicates the difficult role of police officers and contributes to an atmosphere where abuse is tolerated.

Before anyone claims "it can't happen here," they should first address the following five questions:

- (1) Is the mission of police officers realistically defined and understood?
- (2) Is there effective leadership that sets an unmistakable tone in words and deeds that abuse and brutality will not be accepted?
- (3) Does the police department truly reflect the diversity of the community in which it operates?
- (4) Are the department's policies and training programs established openly and designed to comprehensively deter, identify and remedy incidents of police abuse?
- (5) Is there an open, independent, and credible system of accountability that will ensure that violations of policies and standards will be appropriately handled?

Mission of Police Officers

Police abuse is caused, in part, by unrealistic and inappropriate expectations of what police officers can and cannot accomplish. Police departments are society's institutions of last resort. Severe societal problems are often left to local law enforcement whether or not they involve criminal justice issues and whether or not police officers have the tools, training and expertise to effectively address them.

For example, in many communities there are increasing demands on police officers to roust homeless people from public places where they are viewed as unsightly or bad for business. Even though poverty and homelessness are not crimes, the implicit messages to some police officers is that they should "do whatever it takes" to protect certain neighborhoods from the depressing sight of poor people. We should not be surprised that officers who are asked to confront people who may have committed no criminal act at all will sometimes cross the line into inappropriate, illegal or abusive behavior.

In some communities, the sheer volume of violent criminal activity can be overwhelming for police officers who are asked to somehow protect the public and to prevent the lawlessness. In some officers, the inevitable frustration can play itself out in incidents of violence and brutality.

When "war" is declared on drugs, the implicit message is "win at all costs." Basic standards of reasonable force and probable cause become mere luxuries. "Wars" are the most extreme exercises in "us vs. them" and necessarily involve the labelling of entire groups of people as "enemies" whether or not they have individually engaged in any wrongful acts. The result can be tactics and actions that are disturbingly racist. "Wars" inevitably involve "collateral damage" on innocent civilians that must be tolerated for the greater cause. Applying these concepts to domestic policing is not only frightening and dangerous, it is ultimately counter-productive.

Eighteen months ago, the ACLU brought together 100 criminal justice experts, including police administrators, prosecutors, political officials, and others in a unique three-day conference entitled, "Confronting Crime: New Directions." Three major themes emerged from that conference. First, crime will decrease only after we address the underlying causes of crime -- unemployment, poverty and lack of educational opportunities. Second, effective law enforcement is not inconsistent with respect for constitutional rights. And third, community groups and police departments must work cooperatively both on fighting crime and on quality of life issues.

Broader discussion and acknowledgment of these themes on both a local and national level can bring a healthy dose of realism to the expectations we place on police. Police simply will never be able to prevent and solve the enormous problem of crime by themselves. If police officers shoulder the entire burden of fighting crime, the overwhelming scope of the problem will lead to "anything goes" tactics born from frustration and desperation.

Leadership

Even with an appropriate and realistic mission defined for police in a community, actions of officers carrying out that mission can be heavily influenced by the leadership of their department. Police chiefs and administrators set the tone for their departments in their statements, deeds and attitudes towards the communities they serve.

If a chief of police shows contempt for the legitimate concerns of certain communities, the actions of his or her officers will most likely mirror that contempt. If a chief of police is disrespectful or racist in his or her comments about individuals or certain groups of people, the officers may mimic their chief's disdain. In short, it's difficult to have a professional police department led by an unprofessional chief of police.

When incidents of brutality, misconduct or racism occur, the chief's immediate reaction to these incidents will have a great impact on whether the incident will be repeated in the future. A chief that seems more concerned with protecting the department's image than with identifying and disciplining the wrongdoer can send the message that getting caught is a worse sin than the underlying misconduct. In contrast, a willingness to publicly and thoroughly examine even the most embarrassing and damaging incident will demonstrate to both the public and the officers a serious commitment to avoiding the same mistakes in the future.

If the misconduct or policy/training/supervision failure is clear, it must be immediately condemned and addressed. In other incidents

where the facts will become apparent only after a more lengthy investigation, the chief must refrain from comments that seem to excuse the conduct before the investigation is even complete. Any sign that abuse will be tolerated or rationalized or covered-up will erode public confidence in the department and encourage future misconduct.

Diversity of Police Departments

Police departments should reflect as much as possible the ethnic, racial and gender diversity of the communities they serve. A fully-integrated police department will not be immune to problems of brutality. No one would suggest that Latino police officers, for example, will never abuse Latino civilians. However, the lingering problem of local police departments that remain disproportionately white and male, either throughout the department or in the supervisory ranks, is a contributing factor to police abuse in two ways.

First, the dangerous "us vs. them" mentality can be exacerbated in departments, shifts or assignments where officers are not exposed to co-workers and supervisors from different cultural backgrounds. Opening up the profession of policing to people of varied backgrounds and experiences can, over a period of time, lessen the gap between the internal culture and values of a police department and the external culture and value systems of the communities in which they operate.

Second, persistent resistance to affirmative action can heighten tensions within a police department. Tension over racism or equal opportunities in the station house can bubble over into frustration and abuse on the street.

Policies and Training

Policy standards reinforced by training programs are often viewed as the most important weapons against police abuse. Many departments adequately cover at least the "basics" on topics like reasonable force, probable cause, or use of firearms. However, policies and training programs need to be continuously and openly

re-evaluated to ensure they are effective, up-to-date and not inconsistent with the values and priorities of the local community.

Police policies should be subject to public review and debate instead of being viewed as the sole province of police insiders. Open policy-making not only allows police officials to take advantage of community input, it also provides an opportunity for police officials to publicly explain why certain tactics or procedures may be necessary. Local police departments should have little interest in policies or practices that cannot withstand public scrutiny.

Open and inclusive policy-making can also bring creativity and cooperative solutions to persistent controversies. For example, the San Francisco Police Department faced nearly a decade of lawsuits and problems related to crowd control and use of force against demonstrators. In the wake of the Dolores Huerta incident (see above), a special task force was appointed in 1990 to conduct a comprehensive review of the department's crowd control policies. With active participation from the local ACLU, the police union, department officials and legal and community groups, the result was a new manual that provided clearer and explicit restrictions on the use of force and stronger protections for free expression. While some problems remain, complaints of brutality during demonstrations have decreased dramatically in the nine months the manual has been in effect.

The following examples illustrate how going beyond the "basics" in other policy and training areas can help prevent abusive behavior.

TRACKING THE USE OF FORCE:

Policies governing use of force typically define when force is appropriate and set standards for particular types and degrees of force. However, the use of force should be the exception rather than the rule. Policies should also require a written report any time certain types of force are employed (batons, stun guns, mace, etc.). These use of force reports should, in turn, be evaluated on a case-by-case basis and as part of an ongoing

program aimed at spotting problems and patterns. If a particular officer or watch is using force disproportionately often, further inquiries can be made before a tragic incident or lawsuit results. Also, this systematic tracking can help identify particular policy or training problems that are causing force to be used in circumstances when it could be avoided.

BREAKING THE "CODE OF SILENCE": Internal peer pressure and fear are powerful deterrents to police officers reporting brutality committed by fellow officers. A simple policy requirement that officers report any misconduct they observe will have little effect by itself. A procedure must be developed that realistically allows the reporting to actually take place. Just as it might be inappropriate to require a racial or sexual harassment victim to follow the chain of command if the commanding officer has engaged in or tolerated the harassment, a workable procedure must protect the officer reporting the abuse from reprisals from supervisors or other officers. Specialized training should be created to re-enforce the importance of exposing violent behavior by other officers and to explicitly describe how incidents can be reported. Finally, as with any policy, failure to report significant misconduct must result in disciplinary sanctions.

AVOIDING AND DE-ESCALATING VIOLENCE: Since officers must be provided weapons and taught how to use them, they should also be taught special skills that will help them de-escalate situations and avert, whenever possible, situations where force may be necessary. Police officers routinely find themselves in extremely dangerous situations and their acts of bravery are appropriately rewarded. However, some acts of bravery are needlessly risky to themselves and others and should be discouraged rather than encouraged. Officers are trained extensively on that "moment of truth" where they must make a split second decision whether or not to fire their weapon. Techniques that can help lessen the likelihood of ever reaching that moment of truth should also be taught.

COMMUNITY SENSITIVITY TRAINING: Community-police tensions can be reduced

by providing training on issues of special significance in particular communities. For example, the ACLU of Georgia worked with the Atlanta Police Department to address concerns of the gay and lesbian community by providing regular sensitivity training at the police academy and regularly meeting with community leaders. The Northern California ACLU recruited homeless activists and individuals in San Francisco to create a special training video and a police academy presentation on homeless issues.

Systems of Accountability – Independent Civilian Oversight

Even model policies aimed at curbing police abuse will have little impact if they are not enforced. The ability to hold officers to policy standards is largely dependent on civilian witnesses and victims of misconduct being willing to actually file complaints. Only a tiny fraction of brutality incidents will be captured on videotape or reported by police officers.

However, civilian cooperation will remain elusive if the public does not have confidence in the police department's process for investigating misconduct complaints. There are two factors that are crucial to the credibility of any investigative system: the degree of openness in the system and the presence or absence of an independent civilian review mechanism.

OPENNESS: Too often police complaint procedures seem designed as though only the department and accused officer have any legitimate interest in the process. Both the public's interest in evaluating the effectiveness of their complaint system and the complainant's interest in learning how their own complaint is handled are undermined by a fundamental lack of openness. Once a complaint is filed, people are often asked, in effect, to blindly accept that it will be handled appropriately.

The blanket of secrecy that covers many complaint processes leaves even the complainants in the dark about the results of their own cases. This secrecy hides both inadequate investigations and

inadequate disciplinary responses to serious acts of misconduct.

Police officers have legitimate privacy interests about personal information regarding for example, their off-duty conduct, their home addresses or family relations. However, when an on-duty officer is alleged to have brutalized a member of the public in public and the taxpayers may be required to pay not only that officer's salary but also any settlement or award that results from the incident, the public and complainant should have the right to basic information about the investigation of that event.

Only a small percentage of police misconduct cases are sustained. It is important to be able to show to the complainant and the public that all cases are fully and fairly investigated and that the evidence supports the conclusion that no misconduct occurred. Such information enhances public confidence in both the department and its complaint system. As for the sustained cases, secrecy about the investigation and results prevents other officers in the department from determining whether or not their fellow officer is being "scapegoated" and prevents the public from evaluating whether or not the discipline is appropriate for the offense.

In the absence of particularly sensitive issues (for example, rape or sexual harassment allegations) at the conclusion of an investigation three types of basic information about the complaint should be available to both the complainant and the public: (1) the finding; (2) the investigative or disposition report reviewing the investigation and analyzing the evidence; and (3) the specific disciplinary action that resulted, if any.

CIVILIAN REVIEW BOARDS AND AGENCIES: The lack of independent civilian involvement in the police complaint process also undercuts the credibility of many systems. Internal affairs processes that involve the police policing themselves are viewed by the public with great skepticism. From a complainant's perspective, the idea of taking your complaint to the very police department that may have brutalized you and/or

accused you of criminal conduct is particularly intimidating. Civilian review boards or agencies created to independently investigate complaints, therefore, can help overcome public skepticism and encourage community cooperation.

Of the 25 largest U.S. cities, 13 now have some official civilian oversight board or agency monitoring their police department. Many of these were created in the last five years. The trend towards civilian oversight has been fueled by concerns about misconduct and by fiscal concerns. In an era of scarce government resources, it is particularly important that localities attempt to minimize their risk of liability for police abuse by identifying problem officers or tactics in a timely fashion. A civilian review system that enjoys public confidence is better able to provide this early warning system than less credible internal affairs processes.

Police opponents to civilian review continue to argue that only police officers can fairly review the actions of other officers. But in places like San Diego County, Indianapolis, Minneapolis and Long Beach where new civilian review systems have recently been created, these arguments are no longer persuasive. With appropriate training, civilian investigators and board members can perform their oversight function objectively and with a high degree of professionalism.

There is increasing recognition that since we give police officers unique powers to make arrests and use force, civilian oversight of how they exercise those powers is particularly important. Just as systems of independent checks and balances serve to curb abuses of power in other government institutions, civilian review serves this same function with local police departments.

There are several models of civilian oversight. Civilian review boards are typically panels of appointed members that review allegations of police abuse in a hearing format. Civilian oversight agencies, in contrast, use trained professional civilian investigators to probe misconduct allegations by collecting evidence and interviewing witnesses before or instead of a hearing. Some

civilian systems review cases as "appeals" after a police investigation. Others require all cases to be originally investigated by the civilian system. Some handle all types of complaints and others only certain categories.

Regardless of the particular model, civilian oversight systems do *not* by themselves solve police abuse problems. Many systems lack adequate authority, independence or staffing to be effective. Even strong models of civilian review need ongoing commitment and backing from local officials to overcome resistance from police officers who often continue to oppose the agencies or boards even after their creation.

However, the presence of certain key components greatly enhances the effectiveness and credibility of particular civilian review systems:

(1) **Independence.** While the ultimate power to discipline officers should reside with the police chief or his superiors, there must be independent civil review. Civilian review boards must be fully empowered to investigate, conduct hearings, subpoena witnesses and report their findings and recommendations on misconduct complaints to the public.

(2) **Investigatory Power.** Merely auditing or reviewing how police internal affairs systems handle complaints is not as effective as independently investigating and issuing findings on complaints.

(3) **Mandatory Police Cooperation.** Either through legal mandate or subpoena power, civilian oversight systems must have complete access to police witnesses and documents.

(4) **Adequate Funding.** A civilian review system should not be a lower budgetary priority than a police internal affairs system merely because it is comprised of civilians.

(5) **Hearings.** Whether conducted by a board or individual hearing officers, a hear-

ing component provides an important tool for solving difficult credibility questions and greatly enhances public confidence in the system.

(6) **Reflect Diversity of Community.** As a body designed to represent the public, civilian review systems should be broadly representative of the communities they serve.

(7) **Policy Recommendations.** In addition to holding officers accountable, civilian oversight can help spot problem policies and tactics and provide a forum for developing reforms.

(8) **Statistical Analysis.** Public statistical reports can detail trends in allegations and early warning systems can identify individual officers who receive an unusually high number of complaints.

(9) **Separate Offices.** If the civilian oversight system is housed at police headquarters and if complaints may not be filed at non-police locations, community confidence and the perception of independence can suffer.

(10) **Role in Discipline.** The findings of the civilian review system must have a meaningful impact on whether and how much discipline results in particular cases. If the findings are routinely ignored, the civilian oversight system will soon lose public confidence.

The problem of police abuse is primarily a local problem which must be addressed in each local area. However, the federal government also has an obligation to protect people from abuse by local police. The federal government should be playing a more active role in this effort. Some recommendations toward that end are presented in the next section.

The Federal Response

The federal government's response to the problem of police abuse by local law enforcement agencies has been largely indifferent and not effective. The Justice Department has not fully exercised the power it has in this area. The President has failed until the King incident to take the problem seriously, and that indifference has led to a less than forthright response. At the same time, the Justice Department lacks a key power: the legal authority to bring civil enforcement actions to challenge patterns and practices of police abuse in violation of federally protected civil rights when there are no other effective means of redress.

The Justice Department should more aggressively exercise its existing authority under the provisions of 18 U.S.C. §§ 241 and 242 to prosecute law enforcement officers for federal criminal civil rights violations. Congress should give the Justice Department additional authority to deal effectively with patterns and practices of police abuse. Congress should also condition the receipt of federal funds on the institution of local reforms that would deal more effectively at the local level with the police abuse described in this report. It should also consider making it easier for private citizens to sue for damages.

Justice Department Inaction

The Justice Department has the power to bring federal criminal civil rights prosecutions under 18 U.S.C. §§ 241 and 242.¹ These Reconstruction era civil rights statutes provide for criminal penalties for willful violations of federally protected civil rights and conspiracies to violate these rights. The statutes provide for penalties of up to ten years imprisonment for violations, or any term of years if death results. These statutes, however, have been narrowly interpreted by the Supreme Court, making prosecution difficult.

During the past five years, the Department of Justice has received approximately 8,000 complaints of criminal civil rights violations by local police each year. It is clear that these complaints represent only a fraction of the police abuse in the nation each year. One police abuse referral agency, the Police Misconduct Lawyer Referral Service, recorded more than 2,500 police abuse complaints in 1990 in the Los Angeles area alone. Complaints to the Justice Department have declined by 20% since 1981, at a time when complaints about police abuse appear to have increased nationally.

¹ § 241 states: If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured -

They shall be fined not more than \$10,000 or imprisoned not more than ten years or both; and if death results, they shall be subject to imprisonment for any term or years or for life.

§ 242 states: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitants being an alien, or by reason of his color, or his race, then are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than 10 years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

The Justice Department conducts an investigation in fewer than half the cases brought to its attention each year. Moreover, attorneys familiar with the FBI investigative process believe that the majority of investigations are cursory. The FBI does little more than accumulate the local police reports, which themselves may be unreliable, as the Rodney King incident graphically illustrates. The ACLU is aware of a number of cases of severe police abuse where the Justice Department failed to undertake even a cursory investigation into brutality allegations from lawyers representing the victims.

Out of the approximately 3,000 complaints that are investigated in a year, only about 50 cases are presented to a grand jury for possible indictments. That translates into prosecutions in little more than one half of one percent of the complaints received by the Department of Justice. Moreover, a significant number of those charged under the criminal civil rights statutes are prison guards not law enforcement officers. In 1990, only 35 law enforcement officers nationwide were charged with criminal civil rights violations.

The Justice Department should play a more aggressive role in enforcing federal criminal sanctions against law enforcement officials who violate civil rights. While the Justice Department activities have broadened in scope over the past decade, the resources devoted to the investigation and prosecution of criminal civil rights violations have not increased. The Justice Department cannot undertake serious investigations of police abuse if it does not allocate sufficient resources to this vital task.

Local U.S. attorneys' officers should be encouraged to bring such actions on their own initiative, instead of being restricted by internal department guidelines as they are now. A more aggressive enforcement posture, based on inde-

pendent FBI investigations into police abuse allegations would send a much needed message that federally protected civil rights cannot be ignored.

Finally, Congress should consider amending or supplementing 18 U.S.C. §§ 241 and 242 in order to facilitate prosecution of law enforcement excesses while maintaining the due process rights of accused officers.

The Absence of Pattern and Practice Authority

The absence of authority for the Justice Department to undertake pattern and practice lawsuits where police abuse is widespread in a community is a fundamental problem that Congress must correct. If the Justice Department had such authority it could seek federal court relief that would address broader patterns and practices of police abuse and prevent incidents like the Rodney King incident, instead of focussing exclusively on the narrower range of abuses involving criminal wrongdoing by officers.

The Justice Department has a unique and vital role to play in this area because of limits on the ability of private litigants to challenge such practices and the inability of internal disciplinary systems or local prosecutors to restrain police misconduct effectively.

Existing Supreme Court cases severely limit the ability of private litigants to address these problems through private civil rights suits under 42 U.S.C. § 1983.² These cases prevent most private pattern and practice police abuse suits from being brought because no individual or class of plaintiffs has standing in federal court.

2 § 1983 states: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

This principle is illustrated most vividly in *City of Los Angeles v. Lyons*, an ACLU case challenging the use of chokeholds by the LAPD. Since 1978, 27 people, most of them African Americans, have died as a result of LAPD chokeholds. Most of these deaths occurred before 1982 Police Commission restrictions on the use of the practice. In *Lyons*, the Supreme Court found that the plaintiff, who had previously been choked unconscious, had no standing to challenge the practice because he could not demonstrate that he was likely to be choked again. As a result no one had the ability to bring a lawsuit to stop this deadly practice. The *Lyons* principle prevents private civil rights plaintiffs from obtaining truly effective relief to put a stop to even the most egregious of police practices.

Previously in 1976, in *Rizzo v. Goode*, the Supreme Court overturned a district court injunction which sought to remedy a pervasive pattern of abuse in Philadelphia in the context of a lawsuit by private groups and individuals using federal civil rights law to remedy these abuses. The burdens of *Rizzo* and *Lyons* make it nearly impossible for private litigants to put an end to the most pervasive patterns of police abuse by means of federal civil rights suits. Moreover, lawsuits seeking damages may result in monetary awards to individuals but these awards have not always been effective tools to prevent future abuses.

In the 1970's, after private litigation was thwarted in *Rizzo*, the Justice Department embarked on an eight-month investigation into complaints of police abuse in Philadelphia and filed a pattern and practice suit challenging the widespread abuses discovered in the course of this investigation. But in *United States v. City of Philadelphia*, 644 F.2d 187 (3d Cir. 1980), the Court of Appeals for the Third Circuit found that the Justice Department lacked the authority to bring such pattern and practice suits in the absence of specific statutory authority.

The Justice Department has been given this authority in many areas involving constitutional and civil rights, including the rights of prisoners under the Civil Rights of Institutionalized Persons Act; voting rights under Title VI of the Civil Rights Act of 1960; public accommodations, under Title II, prohibitions on segregation in jails, under Title III, and rights against employment discrimination, under Title VII, of the Civil Rights Act of 1964. But the Justice Department does not have the same authority to protect people from a pattern and practice of police abuse.

The Justice Department must be given this authority and it should be provided with the resources to exercise it.

Other Federal Responses

Congress should also consider changes to 42 U.S.C. § 1983, the basic civil rights statute relied upon by private litigants to redress violations of civil rights, so that § 1983 can become an even more effective weapon against police abuse.³

In recent cases, the Supreme Court has erected unnecessary barriers to imposing liability on municipalities whose police departments violate constitutional rights. For instance, a city is not liable for actions of its officers unless it is proved the misconduct was done pursuant to an established custom or policy of the city. Moreover, recovery against individual officers is often barred by immunity doctrines created by the courts. Legislation is needed to remove these barriers and make state and local governments fully responsible for the unconstitutional actions of their police departments.

Another needed reform would be to permit federal courts to award punitive damages against cities that have policies and practices of police abuse. In 1981, the Supreme Court decided that punitive damages could not be awarded under § 1983 in even the most egregious cases of

municipal wrongdoing. The availability of punitive damages against state and local governments who tolerate or encourage police abuse would be an important tool in the struggle to eradicate these abuses.

The federal government should also condition the receipt of federal funds by state and local government on the undertaking of needed reforms by local law enforcement agencies. In 1989, Congress exercised its spending powers in Public Law 101-144 (November 9, 1989) in which municipal eligibility for certain community development grants was conditioned on the enforcement of policies prohibiting the use of excessive force by local law enforcement agencies against non-violent protestors. However, much more needs to be required of local governments in policing their police departments.

Federal technical assistance should be made available to aid local law enforcement agencies with inadequate policies and procedures.

Federal law should require that local law enforcement officers be accountable to the public through adequate systems for the consideration of civilian complaints and internal discipline. This is especially important if the Justice Department continues to view its criminal civil rights jurisdiction as a "back stop" for local discipline and criminal sanctions against officers who abuse the rights of members of the community. At a minimum, the federal government must insist that such local controls are effective.

The Justice Department must also maintain national data about police abuse complaints and the local responses to such complaints, just as the Justice Department maintains crime statistics. The American people should have information about the patterns of police abuse and the response to this abuse at the local and national level. This information is also vital to Congress' oversight function.

Conclusion

The persistence of police brutality cannot be viewed in historical isolation. The problem did not begin with the Rodney King incident in Los Angeles in March 1991. Nor will it end there. In truth, police brutality has always been with us. All of us must acknowledge that. The question is how to remedy it.

First and foremost, we must recognize that police abuse is fundamentally a local problem. It is here reform must begin. Police chiefs and administrators bear primary responsibility for developing and implementing proper and workable procedures and standards of performance and accountability. They must also ensure that their police are well trained so that they do not perform as an occupying army that views citizens as aliens or enemies, but rather that they act as a community resource working in conjunction with other social resources to eradicate citizen problems. Crime is not the exclusive responsibility of the police.

The federal government should also contribute significantly to preventing police abuse in two ways: The Justice Department can prosecute egregious cases where individual officers have violated the civil rights of citizens, and it can file "pattern and practice" lawsuits to enjoin police abuse where it is systematic. This latter authority would require additional congressional legislation.

Third, politicians and public officials should declare a moratorium on the use of "war" as a metaphor for solving complicated social problems.

Finally, federal and state lawmakers must devise and fund social, economic and education programs that address the root causes of the problems that afflict our cities and act as a catalyst for the crime all of us wish to prevent.

Ending police brutality is a difficult task facing us at this particular time in our history. For the past decade, the Supreme Court has undermined a number of safeguards guaranteed by the Bill of Rights. At the same time, successive administrations under Presidents Reagan and Bush have advocated expansion of police powers, often at the expense of the constitutional rights of the accused. Those developments, taken together, have set the wrong tone and sent the wrong signal.

Our communities cannot simply ignore those signals or the past pattern of police brutality and its causes, for the problem will only worsen. The means to correct the problem are well known. What is needed now is the political will to implement them.

EXHIBIT 13

• ORGANIZATION

The International Association for Civilian Oversight of Law Enforcement (IACOLE) has been established as a voluntary, tax-exempt, nonprofit professional association formed under the sponsorship of interested persons for the purpose of advancing the cause of civilian oversight of law enforcement.

The Association consists of members from throughout the world, including the United States, Canada, Europe, Australia and other locations. IACOLE is governed by a twelve member Board of Directors who are elected biannually by all regular members.

• ORGANIZATIONAL OBJECTIVES

- To provide for the establishment, development, education, and technical assistance of/for the civilian oversight of law enforcement.
- To develop an international forum to provide an informational and educational clearinghouse and a publication resource of educational information for the public and organizations in the field of civilian oversight of law enforcement.
- To encourage the highest ethical standards in organizations which oversee law enforcement.
- To educate the public by developing mechanisms to enhance police and community relations, to educate law enforcement agencies and to encourage them to respond with sensitivity to citizens' complaints.
- To encourage full racial and ethnic representation and participation in this organization and the agencies overseen by its members.

• MEMBERSHIP CATEGORIES

• REGULAR MEMBERS

Those persons who are not sworn law enforcement officers and who work for or constitute agencies which are established by legislative or executive authority to investigate and/or review complaints against law enforcement.

• ASSOCIATE MEMBERS

Those persons who are interested in the oversight of law enforcement. These members shall be able to participate in all Association activities including serving on committees, but are ineligible to vote or to serve as officers.

• PROGRAMS AND SERVICES

- Provision of relevant information to municipalities and organizations who wish to create a civilian oversight agency or are interested in experiences of existing agencies.
- Sponsorship of an annual conference of members and interested parties which provides an international forum for training, the exchange of ideas and formation of productive relationships. Conference proceedings and selected speeches are printed and distributed.
- Publication of a quarterly newsletter of timely articles, position papers and other information which serves to promote increased understanding of relevant issues and concerns to IACOLE members and the general public. This letter includes recent developments in the field and announcements about IACOLE programs and activities.
- Provision and updating of valuable documents including an international compendium of civilian oversight agencies and a catalogue of international publications about citizen complaint procedures.

INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT MEMBERSHIP APPLICATION

Name: _____ Title: _____
Agency: _____
Address: _____
City, State, Zip (Province): _____ Country: _____
Telephone: Area code () _____

Membership Type:

☐ Member (\$150 U.S.) ☐ Associate (\$75 U.S.)

Amount Enclosed \$ _____
(please use envelope)

Make checks payable to IACOLE

Please bill me: ☐

I am interested in the following information:

☐ IACOLE Newsletter
☐ Conference proceedings
☐ International Compendium
☐ Annual Conference
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EXHIBIT 14

JUDICIARY SUBCOMMITTEE ON PEACE OFFICER CONDUCT
SAN JOSE, CALIFORNIA
DECEMBER 19, 1991

BACKGROUND

The Bay Area serves as the setting for the final hearing of the Subcommittee on Peace Officer Conduct. Previous hearings in East Los Angeles, Ladera Heights, West Hollywood, Arcata, and Redding have established the fact that we face a very serious problem in California. At a time when crime is seen as a major impediment to the well-being of many Californians, and increasingly sited as a primary reason for many wishing to leave the state, law enforcement agencies, those whom the population should turn to for help are viewed by many Californians as more a part of the problem than part of the solution.

While we must acknowledge that law enforcement agencies are faced with an increasingly difficult job to perform with diminishing resources, far too many of those resources would appear to be squandered paying for the misdeeds of a few rogue officers. In Los Angeles County alone, between 1988 and 1991, over 65 million dollars has been spent paying verdicts and settlements resulting from excess use of force by LAPD and the County Sheriffs. These limited resources could clearly be put to better use by fiscally strapped county governments.

This is not just a problem of our cities. In rural counties numerous beatings were alleged and investigated against citizens too terrified to come forward. The district attorneys and county sheriffs are often viewed as so closely connected that aggrieved citizens were left defenseless.

As the Christopher Commission recently concluded, the root of the problem of excessive force in Los Angeles County law enforcement is institutionalized bias and prejudice. Only by its systematic elimination can the citizens of Los Angeles County have complete faith in their men and women in uniform. What is true in Los Angeles County we have found to be true throughout California.

The Subcommittee on Peace Officer Conduct is today hearing testimony and gathering other evidence in an effort to develop appropriate legislation to address the problems of excessive force and institutionalized bias and prejudice in Los Angeles County and the State of California.

It is no longer acceptable for law enforcement officials to engage in discriminatory treatment of citizens or fellow officers. Elected officials must do all that is within their power to ensure that every citizen of California, whether black, white, yellow, or brown, male or female, straight or gay, is treated with the respect and dignity which each Californian expects and deserves. Toward that end, we are proposing legislation for creating a statewide Police Review Commission with an independent prosecutor attached. Copies of that proposed legislation are available for your review today.

AGENDA
JUDICIARY SUBCOMMITTEE ON PEACE OFFICER CONDUCT
San Jose, California
December 19, 1991

PANEL I

Louis Cobarruviaz
San Jose Police Chief

PANEL II

John Crew
Staff Attorney
American Civil Liberties Union

Jerome Skolnick
Univeristy of California, Berkeley
Boalt Hall School of Law

Tony Boskovich
Chair, Santa Clara County Bar
Association on Citizen Review

PANEL III

Warren Rupf
Assistant Sheriff
Contra Costa County Sheriff's Department

PANEL IV

Aileen Luna
Office of Citizen Complaints
City of San Francisco

Jim Chanin
Former Chair
Berkeley Police Review Commission

Robert Bailley
Police Review Commission
City of Berkeley

PANEL V

Emily White
Trainer of Law Enforcement in Cultural Sensitivity
Evergreen Police Academy

PANEL VI

Joseph McNamara
Research Fellow, Hoover Institution
(former Police Chief, City of San Jose)

EXHIBIT 15

IN SUPPORT OF BROAD FIFTH AMENDMENT PROTECTION

The members of the committee differed markedly on the issue of Fifth Amendment protections for the subject officer of a citizen complaint. Some members believe there should be an actual criminal investigation in progress before the subject officer may exercise his or her Fifth Amendment right against self-incrimination. According to them, a subject officer would be compelled to testify in public session regardless of the potential for criminal liability so long as there is no actual criminal investigation in progress at the time of the citizen review proceedings. If there were an ongoing criminal investigation, the citizen review process would be stayed. That approach may not fully reflect the special protections California has granted to its peace officers through the Peace Officers' Procedural Bill of Rights Act, Government Code Sections 3300 et seq.

Those involved in years of local representation of police officers in administrative and criminal matters conclude that all complaints of excessive force and those "theoretically criminal" are in fact referred to criminal investigators for investigation. Frequently, the prosecutor makes no charging decision until he or she has reviewed the subject officer's administrative statement. On some occasions the prosecutor just waits and watches. The statute of limitations for the filing of a misdemeanor complaint is one year; the general statute of limitations for felonies is three years, although there are many felony violations which have much greater time periods for the filing of a complaint. Just because the district attorney does not file immediately does not mean he will not file a complaint at some time in the future.

The majority of the Task Force's approach on this issue undermines an officer's Fifth Amendment rights and sacrifices that officer's exercise of those fundamental protections at the alter of "community relations" and is unconscionable. Ironically, it was the Warren Supreme Court which held: "...policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." Garrity v. New Jersey, 385 U.S. 493, 500 (1966).

The idea that it is acceptable to compel an officer to testify at a public hearing despite potential criminal liability is simply wrong. The argument that allowing an officer to assert

his constitutional rights gives the police a license to control citizen review proceedings is absurd, illogical and trivializes the defense of basic rights.

No reason exists for other officers and citizens not to testify at a hearing in which the subject officer has asserted his right against self-incrimination. In fact, the absence of the subject officer's testimony at the hearing may speak volumes. Since it is an administrative hearing and not a criminal proceeding, the Board could consider the absence of the officer's testimony in its deliberations, findings and recommendations.

It is ingenuous to believe that public, inculpatory testimony would not be used against the officer in a subsequent criminal proceeding. It has been suggested that a Lybarger admonition would cure any harm done as a result of compelling an officer to give incriminating testimony. Public pressure, the press, politics and the opportunity for the prosecutor to use such publicly available information (although it theoretically cannot) are irresistible incentives to fudge. After all, Lybarger only provides so-called use immunity, not full, transactional immunity.

In the context of a traditional internal affairs investigation, a deputy district attorney may review the subject officer's administrative statement in accordance with Penal Code Section 832.7. In theory, Garrity, Gardner and Lybarger preclude "use" of that statement in a criminal proceeding. In this county the District Attorney handles the problem by constructing a Chinese wall between the deputy who reviews the subject officer's administrative statement and the deputy who will prosecute the officer. While not perfect, such a procedure at least attempts to follow the spirit of the law.

Compelled, incriminating testimony given publicly is a whole different animal, indeed. Unfortunately, there are no definitive legal authorities on this point. Though some suggest that the only reported case which remotely touches on this issue reaches a different conclusion, the courts and the legislature never intended that a police officer could or should be compelled to give potentially inculpatory testimony at a public, administrative proceeding.

Whatever citizen review model local jurisdictions adopt, that model should provide full Fifth Amendment protections for its officers. To do otherwise is to accept an artificial, unfair and "watered down" version of constitutional rights for peace officers.

because of an actual criminal investigation in at least the last eight years according to one long-time commissioner.

Second, the Fifth Amendment right against self-incrimination exists only in the context of criminal proceedings -- not administrative investigations.

"As a matter of constitutional law, it is well established that a public employee has no absolute right to refuse to answer potentially incriminating questions posed by his employer. Instead, his self-incrimination rights are deemed adequately protected by precluding any use of his statements at a subsequent criminal proceeding."

(Lybarger, at 827.)

Under the Public Safety Officers Procedural Bill of Rights Act, police officers have stronger statutory due process protections than any other group of public employees in the State of California. However, even police officers may be compelled -- and are routinely compelled -- to answer questions from internal affairs and civilian review systems about their on-duty conduct. (See Government Code §3303(e).) Under Lybarger, these compelled statements in administrative investigations may not be used in criminal proceedings.

With the protection of Lybarger and a mandatory suspension of proceedings when an actual criminal investigation is under way, Fifth Amendment interests are no more threatened by a civilian review system than an internal affairs process. In the rare circumstance that a criminal proceeding actually takes place and is initiated sometime after the review board process, officials involved in the prosecution will need to demonstrate that they were not exposed to the statements protected by Lybarger.

Police internal affairs processes routinely require officers to answer all questions about their on-duty conduct and observations. Civilian review systems must be able to obtain the same level of cooperation from police officers if they are to be credible and effective.

While only a very small portion of citizen complaints of police misconduct lead to criminal investigations of the officers and only a handful result in criminal prosecution, a procedure must be developed that addresses legitimate Fifth Amendment concerns for these rare situations but that also protects the integrity of the civilian review function in the much more common administrative context. Suspending the review board process when an actual criminal investigation or proceeding is pending -- rather than when a mere claim is made that such a proceeding might take place -- represents an effective "middle ground" approach. By guaranteeing officers their full rights under Lybarger v. City of Los Angeles, (1985) 40 Cal.3d 822, not to have their statements to the review board used in any later criminal proceeding ensures that their right against self-incrimination will be protected.

Carefully distinguishing between criminal and administrative investigation of police misconduct complaints is crucial to understanding this issue. First, it is possible to label a number of citizen complaints as theoretically criminal in nature. For example, unnecessary force allegations might be criminal assaults. False arrests might be kidnappings. In reality, these allegations are almost always investigated only as possible administrative policy violations. The sanctions are disciplinary reprimands and suspensions -- not criminal fines and incarceration.

If the theoretical possibility that a criminal investigation might occur were all that was required to halt an administrative civilian review process, the system would be unable to hear all but the most innocuous of allegations. If officers were given the unilateral power to either cease the review board's investigation or to force their proceedings into closed session by claiming they feared possible criminal proceedings, this claim would be made in every case where the officers wanted to avoid the review board's and/or the public's scrutiny. The primary purposes for establishing an independent review board in the first place would be defeated.

We are aware of no civilian review or police internal affairs system that gives the officer the authority to determine whether or how the investigation will proceed when criminal proceedings might be possible. On the other hand, many systems simply ignore active criminal investigations and proceed with their administrative investigations or hearings without delay or interference. Suspending the civilian review process pending the completion of an actual criminal proceeding is a compromise between these two extremes that has been successfully used in other jurisdictions. Under the same mandate, for example, Berkeley's Police Review Commission has not had to suspend its proceedings on any case

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